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OHIO SCHOOL LAWS,

ACCOMPANIED BY

BLANK FORMS

AND

OPINIONS OF COMMISSIONERS:

PREPARED BY

THE STATE SCHOOL COMMISSIONER,

FOR THE USE AND GOVERNMENT OF SCHOOL OFFICERS.

THIRD EDITION, 1862.

COLUMBUS:
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1862.

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PREFACE TO SECOND EDITION.

STATE OF OHIO, OFFICE OF COMMISSIONER OF SCHOOLS,
COLUMBUS, June 7, 1858.

Section 54 of the general school law makes it the duty of the School Commissioner to "cause as many copies of the laws relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals and other documents for the use of the school officers therein, as often after the first distribution as any change in said laws may be made of sufficient importance, in the opinion of the Commissioner, to require a republication and distribution thereof."

Strict obedience to the requirements of this section would have led to the publication of a new edition of school laws, forms, &c., one year ago, as numerous and important amendments had then been enacted. Many school officers throughout the state requested that the work should not be delayed, as much inconvenience was experienced from its want. But in view of the probability that additional amendments would be enacted by the succeeding Legislature, and unwilling that the state should be subjected to the expense of publishing an edition which might within six months become obsolete, I judged it prudent to defer the publication until the present season. As but a single section of the law was amended during the recent session of the Legislature, and as there was manifested a general indisposition to make further changes, there is a strong probability that the present school laws of the State will remain for years without material alteration.

The former edition was published under the supervision of the Hon. William Trevitt, Secretary of State, in 1853. It embraced only the general school law, and forms for the use of school officers. The present edition comprises,

1st. The act to provide for the reorganization, supervision and maintenance of common schools, passed March 14, 1853.

2d. The Akron school law, with its various amendments.

3d. The act for the better regulation of the public schools in cities, towns, &c., passed February 21, 1849.

4th. The several enactments concerning teachers' institutes.

5th. School lands, and irreducible school funds.

6th. Forms.

7th. A selection of the published opinions of the late, and the present Commissioner, relative to the interpretation of school laws.

It will be observed that the laws are published in the form in which they now exist. Amended sections are indicated by reference to explanatory notes.

For the statement respecting the irreducible school funds, I acknowledge indebtedness to the late Commissioner, the Hon. H. H. Barney.

To prepare suitable forms for conducting proceedings under our school laws, much care and labor have been expended; and it is believed that decided improvement has been made upon those heretofore in use. In the preparation of these forms, a large number of the Auditors of Counties have been consulted. The form for teachers' register was, at my request, furnished by A. J. Dildine, Esq., Auditor of Fairfield county.

Of the numerous published opinions of my predecessor, not a few have become inapplicable, by reason of changes in the school law, enacted since their publication. Of the remainder, I have selected nearly eighty, which, together with many of my own, are inserted in this volume. It is believed that they will prove convenient to school officers throughout the State; and it is hoped that they will obviate the necessity of much of the correspondence which has hitherto been required of this department.

ANSON SMYTH,
State School Commissioner.

PREFACE TO THIRD EDITION.

OFFICE OF STATE SCHOOL COMMISSIONER,
COLUMBUS, May 1, 1862.

Four years have elapsed since the publication of the second edition of our school laws. That edition consisted of twenty-five thousand copies. It is nearly a year since it was entirely exhausted; and frequent and pressing calls have been made for a new supply.

The present edition presents the school laws of the State with the various amendments that have been made during these four years. A very large addition has been made to the "Opinions" upon our school law, which, I trust, will greatly assist school officers in the discharge of their duties.

It has been my intention to make various improvements in the Forms and Blanks; but the many other duties which demand my time have prevented the accomplishment of this purpose.

The Circulars included in this volume were originally prepared to serve temporary purposes; but it is my opinion that they contain suggestions which render them of permanent value.

ANSON SMYTH,
State School Commissioner.

SCHOOL LAWS IN FORCE.*

CHAPTER I.

GENERAL SCHOOL ACT.

An Act to provide for the reorganization, supervision and maintenance of Common Schools.

[*Passed March* 1, 1853. *LI vol Stat.* 429.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That hereafter each and every organized township in the state shall compose but one school district for all purposes connected with the general interests of education in the township, and shall be confined to the management and control of a board of education, and the several school districts, or fractional parts thereof, which now are or may hereafter be established in the several organized townships of the state, shall be regarded as sub-districts, and be confided to the management and control of local directors, as hereinafter provided; but nothing contained in this act shall be so construed as to give to the township board of education, or to local directors in sub-districts, juri-diction over any territory in the township included within the limits of any city or incorporated village, with the territory annexed thereto for school purposes, which shall elect or appoint a board of education as hereinafter provided, or which now is or may hereafter be governed, as to schools, by any special or other act, specified in the sixty-seventh section of this act.

Townships compose districts; school districts are sub-districts.

Board of education.

Local directors.

Cities, &c.

ELECTION OF LOCAL DIRECTORS.

SEC. 2. On the second Monday of April, in the year eighteen hundred and fifty-three, there shall be held, at the usual hour and place of holding district meetings in each of the sub-districts of the several townships of the state, a school meeting of the qualified voters resident within the sub-district, and having the qualifications of voters at the state and county elections, who, when assembled, shall organize by the appointment of a chairman and secretary, and proceed to elect, by ballot, three school directors for such sub district; of those so elected, the person receiving the highest number of votes shall hold his office for three years; the person receiving the next highest number, shall hold the office for two years; and the person receiving the next highest number, shall hold the office for one year; and each shall continue in office until his successor is elected and qualified. In case two or more persons so elected have received an

When, where and how directors elected.

Term of office.

* For the convenience of reference, the following acts are numbered as chapters.

equal number of votes, the duration of their respective terms of office shall be determined by lot, in the presence of the chairman and secretary of the meeting; and annually thereafter, in the same manner, on the second Monday in April, there shall be elected in each sub-district of the proper township one school director for the term of three years; and the minutes of the proceedings of any such district meeting shall be signed by the chairman and secretary, and delivered to the directors who shall have been elected as aforesaid, to be recorded by the clerk in the records of the sub-district, and the said clerk of the sub-district shall forthwith certify to the township clerk the names of the local directors so elected, specifying the term for which each was elected. If the directors of any sub district, so elected, shall deem it expedient, they may designate the specific hour of the day on which the annual election for such sub-district shall be held, and in such case shall cause five days' notice thereof, in writing, to be posted up in three of the most public places in such sub-district.

Minutes of the meeting.

Clerk to record.

Clerk to certify.

Hour of holding election. Who may designate. Five days' notice to be given.

SEC 3.* The said directors, within five days after their election, shall take an oath or affirmation to support the constitution of the United States, and of the state of Ohio, and faithfully and impartially to discharge the duties of their office; which said oath the directors are authorized to administer to each other. And in case a vacancy shall occur in the office of director, by death, resignation, refusal to serve, or otherwise, it shall be the duty of the township clerk to fill such vacancy within ten days after being informed thereof, by the appointment of some suitable person, who shall hold his office until the time of the next annual meeting, when a director shall be elected for the remainder, if any, of the unexpired term, in the manner prescribed in section two.

Official oath.

Vacancy, how filled.

SEC. 4 * If the qualified voters of any sub-district shall fail to meet and elect school directors, as prescribed in sections two and three, it shall be lawful for any three qualified voters of such sub-district to call a special meeting of the voters of such sub district, for the purpose of electing directors, on first giving five days' notice, in writing, of the time and place of holding such meeting, by posting the same in three of the most public places in such sub-district; and the directors so elected at such special meeting shall hold their offices for the unexpired term which they were respectively elected to fill.

Special meeting to elect directors.

Terms of office.

SEC. 5 It shall be the duty of the directors, any two of whom shall constitute a quorum, to meet as soon as practicable after having been elected and qualified, at such place as may be most convenient in the sub-district, and organize by appointing one of their number clerk of the sub-district, who shall preside at the official meetings of the directors, and record their proceedings in a book provided for the purpose, together with the minutes of the proceedings of the annual school meetings held in the sub-district, by the qualified voters thereof, which shall be a public record; and all such proceedings, when so recorded, shall be signed by the clerk of the proper sub district. The directors may meet as frequently as they may think necessary for the transaction of business, and fill any vacancies in the office of clerk which may occur in the sub-district; or, in case of his absence, either of the other directors may officiate temporarily in his place.

How directors to organize, and their meetings.

Clerk of sub-districts; duties of.

* As amended April 17, 1857.

DUTIES OF LOCAL DIRECTORS.

SEC. 6. It shall be the duty of the school directors, in each sub-district, to take the management and control of its local interests and affairs, to employ teachers, to certify the amount due them for services to the township clerk, who shall draw an order on the township treasurer for the amount; and to dismiss any teacher, at any time, for such reason as they may deem sufficient; and to visit the school or schools of the sub-district at least twice during each term, by one or more of their number, with such other person or persons competent to examine pupils in their studies, as they may choose to invite.

Their duties.

Township clerk to draw orders on treasury.

SEC. 7. It shall be the duty of the directors, in their respective sub-districts, to negotiate and make, under such rules and regulations as the township board of education may prescribe, all necessary contracts in relation to providing fuel for schools, repairing, building or furnishing school-houses, purchasing or leasing school-house sites, renting school-rooms, and making all other provisions necessary for the convenience and prosperity of schools within their sub-district; but no contracts shall be made by the directors, under the provisions of this section, for the payment of money from the township school fund applicable to such purposes, which in any one year shall exceed the amount distributable to the sub-districts, in proportion to the enumeration of scholars resident therein, without first obtaining the consent or order of a majority of the township board of education; and all contracts made by the local directors, under the provisions of this section, shall be reported to the said board, at their next meeting after the making of such contracts; and said township board of education, in their corporate capacity, on the part of the sub-district, shall be held responsible for the performance thereof.

Duties of local directors continued.

When consent of board to be obtained.

Contracts to be reported to board Board responsible for performance of contracts.

SEC. 8.* It shall be the duty of the directors in each sub-district to take, or cause to be taken, annually, between the first and third Monday of September, an enumeration of all the unmarried white and colored youth, noting them separately, between the ages of five and twenty-one years, resident within such sub-district, and not temporarily there, designating between male and female, and return a certified copy thereof to the township clerk; and in case the directors in any sub-district shall fail to take and return the enumeration aforesaid, it shall be the duty of the township clerk to employ a competent person to take the same, and allow him a reasonable compensation for his services; and shall proceed to recover the amount so paid for such services in a civil action before any court having jurisdiction, in the name of the state of Ohio, against said directors in their individual capacity; and in such suits said clerk shall be a competent witness; and the money so collected shall be applied to the use of common schools in the proper township. The township clerk shall make an abstract of the enumeration so returned to him, designating the number of youth in each sub-district, and transmit such abstract, duly certified, to the county auditor, on or before the first day of October.

Enumeration of youth.

Abstract to be transmitted to auditor.

SEC. 9. If any civil township, or part of a township, composing a sub-district, shall be partly situated in the Virginia Military District, the United States Military District, the Western Reserve, or

Different surveys to be noted separately

* As amended April 17, 1857.

in an original surveyed township or fractional township, to which belongs any of section sixteen, or other lands in lieu thereof, or any other lands for the use of schools, or any interest in the proceeds of such school lands, the local directors shall, in taking the enumeration of youth resident within their jurisdiction, return separately those residing in the Virginia Military District, or United States Military District, or Western Reserve, or original surveyed or fractional township, to which belong any school lands, or interest in the proceeds of school lands.

TOWNSHIP BOARDS OF EDUCATION.

Of whom composed.

Quorum.

Township clerk to be clerk of board.

SEC. 10. That the township board of education shall consist of the township clerk, and of the local director from each sub-district of the township, who has been appointed clerk in his sub-district, a majority of whom shall constitute a quorum for the transaction of business; and the clerk of the township shall be clerk of the board, but shall not be entitled to a vote. It shall be the duty of said clerk to be present at the meetings of the board, and to record in a book, to be provided for the purpose, all their official proceedings, which shall be a public record, open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairman and clerk.

Powers and duties.

SEC. 11. The said township board of education, in each township of the state, and their successors in office, shall be a body politic and corporate in law, and, as such, may contract and be contracted with, sue and be sued, plead and be impleaded, in any court of law or equity in this state, and may receive any gift, grant, donation, or devise, made for the use of any school or schools, within their jurisdiction; and, moreover, they shall be, and are hereby invested, in their corporate capacity, with the title, care, and custody of all school-houses, school-house sites, school libraries, apparatus, or other property belonging to the school district as now organized, or which may hereafter be organized, within the limits of their jurisdiction, with full power to control the same in such manner as they may think will best subserve the interests of common schools, and the cause of education; and when, in the opinion of the board, any school house, or school-house site, has become unnecessary, they may sell and convey the same in the name of the township board of education of the proper township; such conveyance to be executed by the chairman and clerk of said board, and shall pay the avails over to the township treasurer of the proper township, for the benefit of schools; and all conveyances of real estate which may be made to said board, shall be to said board in their corporate name, and to their successors in office.

Sessions of the board, regular and adjourned.

SEC. 12.* It shall be the duty of the township board of education to hold regular sessions on the third Monday of April, and on the third Monday of September in each year, in the usual place of holding township elections, or at such place in the immediate neighborhood as may be convenient for the transaction of any business which may be necessary in relation to the subject of either the primary or graded schools of the township, with power to adjourn from time to time, or to hold special meetings at any other time or place

* As amended April 17, 1857.

within the proper township, as they may think desirable for the transaction of business as aforesaid, and at all such meetings shall appoint one of their number to the chair, and in case of the absence of the township clerk, may appoint one of their own number to serve temporarily as clerk.

Management of central and high schools.

SEC. 13. The township board of education shall have the management and control of all the central and high schools of their proper township, which may be established therein under the authority of this act, with full power, in respect to such schools, to employ, pay, and dismiss teachers, to build, repair and furnish the necessary school-houses, purchase or lease sites therefor, or rent suitable school-rooms, and make all other necessary provisions relative to such schools as they may deem proper; and it shall be the duty of said board of education to exercise all the powers conferred on local directors in respect to sub district schools, whenever such local directors shall neglect to discharge their duties in any sub-district, as required by this act; and it shall also be the further duty of said board to prescribe rules and regulations for the government of all the common schools within their jurisdiction; said board of education may provide for German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together, and if the board shall deem it necessary, they may appoint one of their number the acting manager of schools for the township, who shall do and perform all such duties as the board may prescribe in relation to the management and supervision of the different schools, and the educational interests of the township, and may allow him a reasonable compensation for his services.

When to act as local directors.

To prescribe rules, etc.

May provide for German schools.

May appoint acting manager.

Map of township.

Board may alter sub districts.

Sub-districts not to contain less than sixty scholars, except.

School in each sub-district.

SEC. 14. The said board shall prepare, or cause to be prepared, a map of their township, as often as they deem necessary, on which shall be designated the sub-districts of the township, which they may change or alter at any regular session, and the number of scholars assigned to each; but no sub district shall contain within its limits less than sixty resident scholars by enumeration, except in cases where, in the opinion of the board, it is necessary to reduce the number; and it shall be the duty of the board to establish a school in each sub-district of the township, of such grade as the public good, in their opinion, may require; and in the location of primary schools, or schools of higher grade, the board shall have reference to population and neighborhood, paying due regard to any school-house already built, or site procured, as well as to all other circumstances proper to be considered, so as to promote the best interests of the schools.

Assignment of scholars to higher schools.

Disorderly scholars may be suspended.

SEC. 15. The board shall have power to assign such number of scholars to the several primary schools as they may think best; and when such assignment has been made, shall furnish the teacher a list of the scholars to be assigned; and the board shall also have full power to regulate and control the admission of scholars to schools of a higher grade, according to age and attainments, and may admit scholars over twenty-one years of age, and may suspend, or authorize the local directors to suspend, from the privileges of either of the schools, any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session of the school.

SEC. 16. Whenever it shall happen that persons are so situated as to be better accommodated at the school of an adjoining town-

Division of township for educational purposes.

Scholars may be transferred to another township.

ship, or whenever it may be desirable to establish a school composed of parts of two or more townships, it shall be the duty of the respective boards of the townships in which such persons reside, or in which such schools may be situated, or of the townships or parts of which the school is to be composed, to transfer such persons for educational purposes to the township in which such school-house is, or may be located; but the enumeration of scholars shall be taken in each township, as if no such transfer had been made, and such school, when so composed, shall be supported from the school funds of the respective townships from which the scholars may have been transferred; and the board of that township in which the school-house is situated, shall have the control and management of such school, and the board of the adjoining township or townships, so connected for school purposes, shall each make the proper estimates of their share of expenses of every kind necessary to sustain said school, and certify the same to the auditor of their proper county, as part of their annual estimates for school purposes, and draw orders on their respective township treasurers, for such sum as will be in proportion to the enumeration of scholars so transferred, in favor of the board of that township in which such school is located, to be appropriated to the payment of teachers, and for other purposes connected with the establishment or maintenance of said school, as far as applicable.

Board to determine studies, books.

Librarian.

To give bond.

SEC 17. The said board shall have power to determine the studies to be pursued, and the school-books to be used in the several schools under their control, and shall make and enforce such rules and regulations relative to the use and preservation of the school libraries and apparatus as they may think advisable, and shall appoint, or authorize the local directors to appoint a suitable person to act as librarian, and to take charge of the school apparatus, resident at some convenient place in the neighborhood where the school is kept, and may require such librarian to give bond for the faithful discharge of his duties, and allow him such compensation as they may think reasonable.

REPORT REQUIRED OF TEACHERS.

What report must show.

SEC. 18. It shall be the duty of the school-teacher to make out and file with the township clerk, at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the township board or local directors, and until such report shall have been certified and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services.

STATEMENT REQUIRED OF DIRECTORS.

Board of education to report to auditor.

SEC. 19.* The board of education in each township shall prepare, or cause to be prepared, and forwarded to the county auditor, on or before the first day of October, a statement exhibiting the number of children in the township, between the ages of five and

* As amended April 17, 1857.

twenty-one years, distinguishing between male and female; the number of schools, specifying the different grades; the number of teachers, male and female; the number of children, male and female, who have attended school during the past year; the average attendance; the length of the terms of schools; compensation of teachers, male and female; the number and condition of the school-houses and furniture, and the estimated value thereof; the number and condition of the books in the school libraries; the number of libraries; the kind of school books used in the schools; the number and value of school apparatus, and a full account of the expenditures for school purposes, together with such other statistics and information in relation to schools as the state commissioner of schools may require.

CENTRAL OR HIGH SCHOOLS.

Establishment of, and classification of children in.

SEC. 20. Each township board of education shall have power, as hereinafter provided, to establish in their respective townships such number of graded schools, or such modifications of them, as the public may require; and, in case of the establishment of such graded schools, it shall be the duty of the board so to classify the children of the township as to secure to all, as far as practicable, an equitable participation in the advantages thereof; and the board shall designate the sub-districts by numbering them, and schools of a higher grade than primary shall be known by the appellation of central or high schools

Vote to be taken in establishing such schools.

SEC. 21. Whenever, in the opinion of the board of education, it shall become necessary or desirable to provide one or more such central or high schools in their respective townships, the said board shall estimate the probable cost thereof, and call a special meeting of the qualified voters of the township, and who are not residents of any of the territory or districts named in the first section of this act, over which the jurisdiction of the township and local directors is excluded, at the usual place of holding elections, first giving twenty days' notice of the time and object of holding such meeting, by posting the same in some public place in each of the several sub-districts of the township, in which notice the amount or rate of tax, as estimated by the board, shall be stated, and the electors, when convened in pursuance of such notice, shall decide by vote any questions which may be deemed important in relation to the cost and location of the building or buildings, or other provisions necessary for the establishment of any such school, and also the amount of township tax which may be levied for the purpose; and the chairman and clerk of the board shall be chairman and clerk of the meeting, and the clerk shall record in the records of the board the action of the meeting, and the board shall be governed by the direction and vote of said meeting in relation to the subjects or matters so submitted.

Twenty days' notice to be given.

Officers of meeting.

ANNUAL ESTIMATES TO BE CERTIFIED BY THE BOARD.

SEC. 22.*† It shall be the duty of the board of education of any

* As amended April 17, 1857.

†The tax bill passed April, 1862, limits the levies for purposes mentioned in this section to two and three-fourths mills.

organized township of the state, annually to determine, by estimate, as nearly as practicable, the entire amount of money necessary to be expended in the township for purchasing school-house sites, for erecting, furnishing and repairing school-houses, for providing fuel, and for any other school purpose other than the payment of teachers, not exceeding two mills on the dollar of the taxable property of the township: Provided, that if, in the opinion of the township board, a greater tax shall be necessary for said purposes during any year, the board shall call a special meeting of the qualified voters of the school district over which they have jurisdiction, which meeting shall be called and held in the manner prescribed in the preceding section, and shall decide by vote the question whether such greater tax or any other greater tax for said purpose than two mills on the dollar shall be raised. It shall also be the duty of the board to estimate such additional amount as they may think necessary, not exceeding two mills on the dollar of the taxable property of the township, for the exclusive purpose of sustaining teachers in the central or high schools, or for the purpose of prolonging, after the state funds have been exhausted, the terms of the several sub-districts or primary schools in the township, or for both purposes, as the board may adjudge best; these several amounts of money, so estimated or decided upon, the board shall make known by certificate in writing, on or before the first Monday in June in such year, including any tax which may have been voted by a special meeting of electors, as provided in the preceding section, to the auditor of the proper county, who shall thereupon assess the entire amount of such estimates on all the taxable property of the township not included in any city or incorporated village, or territory annexed thereto forming any special district, to be entered by said auditor on the tax duplicate of the county, and collected by the county treasurer at the same time and in the same manner as state and county taxes are collected; and when collected, shall be paid over to the treasurer of the proper township, on the order of the county auditor; and said county treasurer shall be entitled to receive for collections one per cent. on all moneys by him collected for school purposes, and no more.

Auditor to assess the estimates on the taxable property of township.

Funds to be paid to township treasurer. His per centage.

When tax to be assessed on property in sub-district to purchase sites and school-houses.

SEC. 23 * The township board of education shall have power, when, in their opinion, justice and equity require it, to estimate separately the cost of purchasing a school-house site, and erecting or repairing a school-house thereon, in any particular sub-district of the township wherein the inhabitants have not heretofore borne a reasonable share of the burden of taxation for such purpose in comparison with other sub-districts in the township, and certify such portion as they may deem just and equitable of the amount of such estimate, to the county auditor of the proper county, together with a map of the lands and names of the tax-payers in any such sub-district; which amount, so certified, shall be assessed by the auditor on the property therein subject to taxation, and placed on the county duplicate specially, and be collected and paid over in the same manner as other school taxes, and be applied for the specific purpose of providing a school-house in such sub-district: Provided, that such tax shall not be levied in any sub-district wherein the

* As amended April 12, 1858.

same has been heretofore levied, nor in any case shall it be assessed more than once in the same sub-district: And further provided, that such tax shall not be assessed in any sub-district which may be hereafter created, unless the said sub-district shall be composed in whole of territory upon which such tax has not heretofore been levied.*

DISBURSEMENT OF SCHOOL FUNDS.

SEC. 24 † All school funds which may come into the hands of the township treasurer, from whatever source, shall be paid out only on the order of the clerk of the board of education, under the direction of the board; except, in paying teachers for their services, the said clerk may, on such teachers presenting their certificates of qualification, and depositing with the clerk true copies thereof, draw the requisite orders on the treasurer for such amount as may have been certified to be due by any two of the local directors of the proper sub-district in which the teacher was employed; and so much of the school moneys coming into the hands of the treasurer as may be derived from the state tax, or from any township tax levied for the continuation of schools after the state fund has been exhausted, or from such school funds as arise from the sale or rents of section sixteen, or other school lands, shall be applicable only to the payment of teachers in the proper township, and shall be drawn for no other purpose whatever; and all school funds made applicable to the payment of teachers only, shall be distributed to the several sub-districts, and fractional parts thereof, in the township, in proportion to the enumeration of scholars, with the exception of so much of the township tax as may have been levied and reserved by the board for sustaining teachers in the central or high schools, and with the further exception of so much of said township tax as may be necessary for prolonging the schools the required length of time in those sub-districts which contain comparatively a small number of resident youth of school age, and which, owing to sparseness of population, or other unavoidable obstacles, cannot be enlarged without serious inconvenience to the inhabitants; and such school funds as arise from the sale or rents of section sixteen, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong. All other school funds of the township not raised for the central or high schools nor made applicable to the payment of teachers

Funds to be paid out on order of clerk, except teachers.

How teachers paid.

Disbursement of funds.

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* An act explanatory of an act entitled "an act to amend section twenty-three of an act entitled 'an act to provide for the organization, supervision and maintenance of common schools,' passed March 11, 1853," passed March 12, 1859

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the provisions of the act entitled "an act to amend section twenty-three of an act entitled 'an act to provide for the organization, supervision and maintenance of common schools,' passed March 11, 1853," passed April 12, 1858, shall be so construed as to authorize the levy of a tax upon any sub-district for the purpose of completing the erection or repair of any school house in such sub-district which was in process of erection or repair at the time said act, passed April 12, 1858, took effect, or for paying debts incurred therefor.

Levy of sub-district tax to complete, &c., school-house.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

April 6, 1859.

† As amended April 17, 1857.

aforesaid, shall be applied, under the direction of the board, in procuring school-house sites, building, furnishing and repairing school-houses, providing fuel, and in making such other provisions for schools in the sub-districts of the proper township, as may in the opinion of the board be necessary; and the board of education of each township, city, or village, shall make the necessary provisions for continuing the schools in operation in their respective townships, or separate school districts, for at least six months in each year.

To provide for six months' school in each sub-district.

DIVISION OF DUTIES, AND LIABILITY OF CLERK.

Duties of clerk, &c.

SEC. 25. The clerk of the board of education, or any one or more of the board designated for that purpose, or the acting manager of schools of the township, may do and perform all such duties and services connected with the interests of schools, as the board may direct, and report the same to the board for their action and approval; and it shall be the duty of the clerk of the board to keep a full record thereof, in connection with the records of the other official proceedings of the board; and, in case of failure to keep such record, or other records required by this act, the clerk of the board shall be liable in a civil action for all loss or damages that may ensue to any person or persons, or to the school district, in the name of such person or persons, or board of school directors, as the case may be, and shall, moreover, be liable, on complaint filed in the name of the state of Ohio, before any justice of the peace, or other court having jurisdiction, to a fine, not exceding one hundred dollars, which, when collected, shall be paid over to the treasurer of the proper township, for the benefit of schools.

SETTLEMENT WITH TREASURER.

Board to settle with township treasurer.

SEC. 26. It shall be the duty of the board of education to make settlement with the township treasurer at their regular session in April, annually; but if, for want of time, or other reason, a settlement can not be made at said session, then it shall be the duty of the board to appoint a committee composed of one or more of their own members, to make such settlement as soon as practicable, and report the result to the clerk of the board, who shall record an abstract thereof in the records of the board.

TREASURER, AND HIS DUTIES.

Duties of township treasurer; to give bond; its condition, etc.

SEC. 27. The township treasurer, in each township, shall be the treasurer of all school funds for school purposes, belonging to the township, arising from whatever sources; and on his election, and before entering upon the duties of his office, he shall give bond, with sufficient security, in double the probable amount of money that shall come into his hands, payable to the state of Ohio, to be approved by the trustees of the township, conditioned for the faithful disbursement, according to law, of all such funds as shall from time to time come into his hands, and, on the forfeiture of such bond, it shall be the duty of the township clerk to prosecute and collect the same for the use of the schools in the township; if such township clerk shall neglect or refuse to so prosecute, then any freeholder may cause such prosecution to be instituted.

When township clerks to prosecute

SEC. 28. Before the county auditor shall issue to the township treasurer any order on the county treasurer for the payment of any school funds belonging to the township, such township treasurer shall furnish the auditor with a certificate from the township clerk, that such treasurer has executed and filed with him a bond, as provided for in the foregoing section, and also stating the amount of said bond; and the auditor shall in no case permit the township treasurer to have in his hands, at any one time, an amount of school funds over one-half the amount of the penalty in such bond; and the township trustees shall allow the township treasurer a compensation equal to one per cent. on all school funds disbursed by him, to be paid on the order of the trustees, out of the township treasury.

Certificate to be furnished auditor.

SEC. 29. The township treasurer shall, annually, between the first and 20th of February, settle with the county auditor, and account to him for all moneys received, from whom and on what account, and the amount paid out for school purposes in his township; the auditor shall examine the vouchers for such payments, and, if satisfied with the correctness thereof, shall certify the same, which certificate shall be *prima facie* a discharge of such treasurer; and at the expiration of his term of service, said treasurer shall deliver over to his successor in office all books and papers, with all moneys, or other property, in his hands, belonging to said township, or the schools therein, and also all orders he may have redeemed since his last annual settlement with the county auditor, and take the receipt of his successor therefor, which he shall deposit with the township clerk within ten days thereafter; and for making such annual settlement he shall be entitled to receive the sum of one dollar, to be paid out of the county treasury, on the order of the county auditor.

Settlement of auditor and treasurer.

Auditor's certificate.

Treasurer to deliver over books, papers, etc.

Treasurer's receipt, etc.

SEC. 30. In case the township treasurer shall fail to make such annual settlement within the time as prescribed in the preceding section, he shall be liable to pay a fine of fifty dollars, to be recovered in a civil action in the name of the state of Ohio, and, when collected, to be applied to the use of common schools in the proper township; and it is hereby made the duty of the county auditor to proceed forthwith, in case of such failure, by suit, against such treasurer, before any justice of the peace of his county, to recover the penalty aforesaid; but when it shall appear, on trial, to the satisfaction of said justice, that said treasurer was prevented from making such settlement within the time prescribed, by sickness, or unavoidable absence from home, and that such settlement has since been actually made, it shall be lawful for the justice to discharge such treasurer, on the payment of costs.

Penalty against township treasurer.

SCHOOLS FOR COLORED CHILDREN.

SEC. 31. The township boards of education in this state, in their respective townships, and the several other boards of education, and the trustees, visitors and directors of schools, or other officers having authority in the premises, of each city or incorporated village, shall be and they are hereby authorized and required to establish, within their respective jurisdictions, one or more separate schools for colored children, when the whole number, by enumeration, exceeds thirty, so as to afford them, as far as practicable under all the circumstances, the advantages and privileges of a common school education; and all such schools so established for colored children shall be under

Schools for colored children.

the control and management of the board of education, or other school officers who have in charge the educational interests of the other schools; but in case the average number of colored children in attendance shall be less than fifteen for any one month, it shall be the duty of said board of education, or other school officers, to discontinue said school or schools for any period not exceeding six months at any one time; and if the number of colored children shall be less than fifteen, the directors shall reserve the money raised on the number of said colored children, and the money so reserved shall be appropriated for the education of such colored children, under the direction of the township board.

CITIES AND VILLAGES.

What cities and villages are school districts.

SEC. 32. Each city or incorporated village, including the territory annexed to the same for school purposes, not otherwise specially regulated by charter, or governed as to schools by laws as specified in the sixty-seventh section of this act, and which, with the territory annexed, contains not less than three hundred inhabitants, shall be, and hereby is created a separate school district; and the qualified voters of such city or village, with the territory annexed, shall, at the same time, and in the same manner, that local directors of the sub-districts of the township are elected by the provisions of this act, proceed to elect three persons, who shall constitute a board of education for such city or village, with the territory so annexed, and such board shall have the same powers, perform the same duties, and be subject to the same penalties as township boards of education: Provided, that by agreement between the board of education of the township in which such city or village, with the territory annexed, may be situated, and the board of education of such city or village, transfers of territory not within the limits of such corporation, may be made to or from the districts provided for in this section.

Power of board in cities and towns.

SEC. 33 That said board of education, in any city or incorporated village, shall be authorized, when they think it advisable, to divide such city or village into sub-districts; and they may establish schools of different grades, and ordain such rules and regulations for the government and discipline of such schools as they may think conducive to the public good; and it shall be lawful for the township board of education, in any township in which such city or incorporated village is situate, by and with the consent of the board of education of any such city or incorporated village, to transfer thereto for educational purposes the scholars of such parts of their respective townships as lie adjacent thereto, and all such transfers shall be controlled, and such schools supported in the same manner, and on the same principles, as in case of like transfers for the convenience of schools where two or more townships adjoin, as provided in this act.

Clerk of the board—his duties.

SEC. 34.* That it is hereby made the duty of said board of education of such city or incorporated village, at their first annual meeting, to elect, from their own number, a clerk or recorder, and the person receiving a majority of all the votes cast shall be declared elected for one year therefrom, or during the pleasure of said board, and he shall do and perform all the duties required of the clerk of a

* As amended.

township board of education, and such other duties as the board of education may, from time to time, prescribe; and all orders of the board of education for the payment of money shall be countersigned by the clerk or recorder of said board. and it shall be the duty of the treasurer of such city or incorporated village, to receive and disburse the school funds of such city or village, in the same manner as is required of the township treasurers in their respective townships, and for his services shall be entitled to the same compensation: Provided, that the board of education shall require the treasurer to enter into a bond, as required of township treasurers, and that the said treasurer shall furnish the auditor a certificate from the clerk or recorder of such city or incorporated village, that such treasurer has executed and deposited such bond, stating also the amount, as is required of township treasurers in similar cases.

Duty of treasurer of city or town.

To give bond.

Clerk or recorder's receipt.

SEC 35 The board of education of any city or incorporated village, shall have, and may exercise all the powers which are by this act conferred upon the township boards of education, and shall do and perform the like duties, in all respects, so far as applicable, and the school funds shall be divided among the sub-districts, so as to make the distribution as nearly equitable as possible. All taxes for building, purchasing, repairing, or furnishing school-houses and lots, shall be equally assessed on all the property subject to taxation in such city or incorporated village, and the board of education, in expending the same, shall make the necessary provisions for the sub-districts.

Further powers of the board.

SEC 36 In any district or sub district, composed, in whole or in part, of any city or incorporated village, the board of education may, at their discretion, provide a suitable number of evening schools, for the instruction of such youth over twelve years of age as are prevented, by their daily avocation, from attending day schools, subject to such regulations as said board, from time to time, may adopt for the government thereof.

Evening schools.

APPORTIONMENT OF SCHOOL FUNDS.

SEC. 37. The auditor of state shall, annually, apportion the common school funds among the different counties, upon the enumeration and returns made to him by the state commissioner of common schools, and certify the amount so apportioned to the county auditor of each county, stating from what sources the same is derived, which said sum the several county treasurers shall retain in their respective treasuries from the state funds; and the county auditors shall, annually, and immediately after their annual settlement with the county treasurer, apportion the school funds for their respective counties, according to the enumeration and returns in their respective offices; and no township, or other district, city, or village, which shall have failed to make and return such enumeration, shall be entitled to receive any portion of the common school funds. And, in making such distribution, each county auditor shall apportion all moneys collected on the tax duplicate of any township, for the use of schools, to such township; all moneys received from the state treasury, on account of interest on the money accruing from the sale of section sixteen, or other lands in lieu thereof, to the civil townships and parts of civil townships in the original surveyed township, or fractional township, to which such land belongs; all moneys

State auditor to apportion funds and certify apportionment.

County auditor to make apportionment in county, and how.

received by the county treasurer, on account of the Virginia Military school fund, United States Military District, and Connecticut Western Reserve, according to laws regulating the same; and all other moneys for the use of schools in the county, and not otherwise appropriated by law, to the proper township; and he shall, immediately after making said apportionment, enter the same into a book, to be kept for that purpose, and shall furnish the township treasurers and township clerks, treasurers and recorders of incorporated cities or villages, as the case may be, each with a copy of said apportionment, and give an order on the county treasurer to each township treasurer, or to such treasurer as may be entitled to receive the same, for the amount of money belonging to his respective township, city, or village, and take a receipt from such treasurer for the amount thus received; and the said county auditor shall collect, or cause to be collected, the fines and all other moneys for school purposes, in his county, and pay the same over to the county treasurer; and he shall inspect all accounts of interest for section sixteen, or other school lands, whether the interest is paid by the state or by the debtors, and take all the proper measures to secure to each township its full amount of school funds.

Where part of section sixteen lies in two counties.

SEC. 38. When any original surveyed township in which section sixteen has been sold, shall lie in two or more counties, the auditors of the respective counties shall certify to the auditor of the county in which that portion of said township lies containing said section sixteen, the enumeration of the scholars in that part of said township embraced within their respective counties; and the auditor of said county in which said section sixteen is situate shall apportion the fund derived from said section sixteen to the different portions of said township, according to said enumeration, and shall certify to the auditors of the other counties the amount belonging to the parts of said township situate in their respective counties, and draw an order in favor of the treasurers of the other counties on the treasurer of his own county for the amount going to each; and the auditors of the respective counties shall apportion the same, in their respective counties, to such portions or parts thereof as may be entitled thereto.

Interest on section.

SEC 39. The interest on the purchase of any such section sixteen belonging to any such original surveyed township, so as aforesaid lying in two or more counties, shall be paid over on the order of the auditor of that county in which such section sixteen is embraced, to the treasurer of the same county, to be apportioned as is pointed out in the preceding section.

RETURN OF ABSTRACT TO STATE COMMISSIONER.

Duty of county auditor as to returns to state commissioner.

SEC. 40.* The auditor of each and every county shall, on or before the fifth day of November, annually, make out and transmit to the commissioner of common schools, at Columbus, an abstract of all the returns of school statistics made to him from the several townships in his county, according to the form that may be prescribed by the state commissioner; and he shall cause to be distributed all such circulars, blanks and other papers, including school laws and documents, in the several townships in the county, as said commissioner shall lawfully require; in case the county auditor shall fail,

* As amended April 17, 1857.

from any cause, to make return of the abstract as aforesaid, it shall be the duty of the county commissioners to deduct for every such failure, from the annual salary or allowance made to the auditor for his services, the sum of fifty dollars.

Penalty against county auditor.

SEC. 41. The county commissioners of each county in this state shall make the same allowance to the county auditors, out of their respective county treasuries, for services performed and expenses incurred under this act, as is allowed for other services of like nature.

Compensation to county auditor.

SEC. 42 The township clerks and county auditors shall be responsible for all losses sustained by any township or county, by reason of any failure on their respective parts to make and return the enumerations and abstracts thereof as herein provided, and shall each be liable for the same, in a civil action, at the suit of the state of Ohio; and the amounts so recovered shall be apportioned, in the same manner as the school funds would have been, to the respective counties or townships, as the case may be.

Liability of the clerk and county auditor for loss.

SCHOOL HOUSES EXEMPT FROM SALE ON EXECUTION.

SEC. 43. Each and every lot or parcel of land which heretofore has been, or hereafter shall be, appropriated for the use of common schools in this state, on which there has been or shall be a school-house erected, and which has been or shall be occupied for the purpose of accommodating a common school, of whatever grade, in the usual manner, from time to time, howsoever or by whomsoever the legal title to the same may be held and vested, shall be and the same is hereby exempted from sale, on any execution, or other writ, or order in the nature of an execution: Provided, that the lot of land so exempted shall not exceed four acres, and if there be any excess, that portion most convenient for school purposes shall remain exempt as aforesaid, to be determined by the proper school directors, or other officers having charge of schools.

What school property exempt from execution.

APPOINTMENT OF SCHOOL EXAMINERS, AND THEIR DUTIES.

SEC 44. It shall be the duty of the probate judge, in the several counties of this state, as soon after the election of school officers under the provisions of this act as practicable, to appoint a county board of school examiners, to consist of three competent persons, resident in the county, who shall hold their office for the term of two years, and until their successors are appointed; and all vacancies in said board which may thereafter occur, whether from expiration of the term of office, refusal to serve, or otherwise, shall be filled by like appointment by said judge.

Probate judge to appoint board of examiners.

SEC. 45. It shall be the duty of the examiners to fix upon the time of holding meetings for the examination of teachers, in such places in their respective counties as will, in their opinion, best accommodate the greatest number of candidates for examination; notice of all such meetings having been published in some newspaper of general circulation in their respective counties; and at such meetings any two of said board shall be competent to examine applicants and grant certificates; but no fee or charge shall be made for a certificate. No certificate of qualification shall be valid in any county except that in which the examination took place, nor for a longer period than two years, and if at any time the recipient of the certificate shall be found incompetent or negligent, the examiners, or any two of them, may revoke the same, and require such teachers

Powers and duties of board.

Notice of meetings.

To grant certificates to teachers.

May revoke the same.

to be dismissed; but such teachers shall be entitled to receive payment for services only up to the time of such dismissal; and no person shall be employed as a teacher in any primary common school, unless such person shall have first obtained from said examiners, or any two of them, a certificate of good moral character, and that he or she is qualified to teach orthography, reading, writing, arithmetic, geography, and English grammar; and in case such person intends to teach in any common school of higher grade, he or she shall first obtain a certificate of the requisite qualifications in addition to the branches aforesaid.

Clerk of board.

SEC. 46. The said board of examiners shall appoint one of their number to serve as clerk, who shall keep a record of their proceedings, noting the number and date of each certificate given, to whom, for what term of time, and for what branches of studies; and the said board may make all needful rules and regulations for the proper discharge of their duties. The members of the board shall be entitled to receive each one dollar and fifty cents for every day necessarily engaged in official service, to be paid out of the county treasury, on the order of the county auditor, exclusive of blank books and stationery, which the county auditor shall furnish; and the county auditor may require the accounts, when presented, to be substantiated on oath, which said officer may administer and file in his office.

Rules of board; their fees.

Stationery.

STATE COMMISSIONER.

When commissioner elected.

Term of office.

SEC. 47. There shall be elected by the qualified electors of this state, at the next annual election for state and county officers, and every three years thereafter, a state commissioner of common schools, who shall hold his office for the term of three years, and until his successor is elected and qualified. The election of said commissioner, and the returns thereof, shall be the same, in all respects, as is provided for the election of judges of the supreme court; and in case a vacancy shall happen in said office by death, resignation, or otherwise, the governor shall fill the same by appointment, for the unexpired term.

Vacancy, how filled.

His official bond

SEC. 48. Before entering upon the discharge of his official duties, the said commissioner shall give bond, in the penal sum of ten thousand dollars, to the state of Ohio, with two or more sureties, to the acceptance of the secretary of state, conditioned that he will truly account for and apply all moneys, or other property, which may come into his hands in his official capacity, for the use and benefit of common schools, and that he will faithfully perform the duties enjoined upon him according to law; and he shall also take and subscribe an oath or affirmation to support the constitution of the United States and of the state of Ohio, and diligently and faithfully to discharge the duties of his office, as prescribed by law, which bond, with the certificate of his oath indorsed thereon, shall be filed with the treasurer of state.

and oath.

Office, etc., at seat of government.

SEC. 49.* The books and papers of his department shall be kept at the seat of government, where a suitable office shall be furnished by the state, at which he shall give attendance when not absent on public business; [and the state librarian shall, in addition to the duties of his office, discharge the duties of secretary to the commissioner of common schools, under his direction]

His secretary.

* The clause enclosed in brackets, was, in effect, repealed, March 24, 1860.

SEC. 50. It shall be the duty of the commissioner to spend, annually, on an average, at least ten days in each judicial district of the state, superintending and encouraging teachers' institutes, conferring with township boards of education, or other school officers, counseling teachers, visiting schools, and delivering lectures on topics calculated to subserve the interests of popular education. His duties in visiting the several judicial districts.

SEC 51. As soon as the revenues, to be raised as hereinafter provided, for the purposes of furnishing the schools with libraries and apparatus, will admit, it shall be the duty of the said commissioner to purchase the same, and the books and apparatus so purchased shall be distributed through the auditor's office of each county to the board of education in each township, city, or incorporated village, according to the enumeration of scholars. And in purchasing books and apparatus.

SEC. 52. He shall also exercise such supervision over the educational funds of the state as may be necessary to secure their safety, and right application, and distribution according to law. He shall have power to require of county auditors, township boards of education, or other local school officers, clerks and treasurers of townships, county treasurers and clerks, recorders and treasurers of cities and villages, copies of all reports by them required to be made, and all such other information in relation to the funds and condition of schools, and the management thereof, as he may deem important. His supervision over school funds. May require reports from certain officers.

SEC. 53. He shall prescribe suitable forms and regulations for making all reports and conducting all necessary proceedings under this act, and shall cause the same, with such instructions as he shall deem necessary and proper for the organization and government of schools, to be transmitted to the local school officers, who shall be governed in accordance therewith. To prepare forms, etc.

SEC. 54. He shall cause as many copies of the laws relating to schools and teachers' institutes, with an appendix of appropriate forms and instructions for carrying into execution all such laws, to be printed in a separate volume, and distributed to each county with the laws, journals, and other documents for the use of the school officers therein, as often after the first distribution as any change in said laws may be made, of sufficient importance, in the opinion of the commissioner, to require a republication and distribution thereof. Duties as to distribution of school laws.

ANNUAL REPORT.

SEC. 55 It shall be the duty of said commissioner of common schools to make an annual report, *on or before the twentieth day of November, in each and every year,** to the general assembly, when the body shall be in session any such year; and when not in session in any one year, then the report shall be made to the governor, who shall cause the same to be published, and shall also communicate a copy thereof to the next general assembly. His annual report.

SEC. 56. The state commissioner, in the annual report of his labors and observations, shall present a statement of the condition and amount of all funds and property appropriated to purposes of education; a statement of the number of common schools in the state, the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of private or What it shall present.

* As amended April 8, 1856.

select schools in the state, so far as the same can be ascertained, and the number of scholars attending such schools, their sex, and the branches taught; a statement of the number of teachers' institutes, and the number of teachers attending them; a statement of the estimates and accounts of the expenditures of the public school funds of every description; a statement of plans for the management and improvement of common schools, and such other information relative to the educational interests of the state as he may think of importance.

Salary of commissioner.

SEC. 57. The said commissioner shall be entitled to receive for his services the sum of fifteen hundred dollars annually, payable quarterly, out of the state treasury, on the warrant of the auditor of state.

SCHOOL LIBRARIES.

One-tenth of a mill to be assessed for libraries.

SEC. 58 * For the purpose of furnishing school libraries and apparatus, to all the common schools in the state, and for the further purpose of sustaining and increasing such libraries, and keeping up a supply of school apparatus in the schools, as aforesaid, from time to time, as may be considered necessary, in order to afford equal facilities to the said schools in this respect, as nearly as practicable, there shall hereafter be assessed, collected and paid annually, in the same manner as the state and county revenues are assessed, collected and paid on the grand list of property taxable for state purposes, a state tax of one tenth of one mill on the dollar valuation, to be applied exclusively for the purposes aforesaid, and the attendant expenses, under the direction of the commissioner of common schools. In purchasing the libraries for the common schools, no books of sectarian or denominational character shall be purchased for said libraries.

Which is to be paid to state treasurer.

SEC. 59 The amount of said tax, when collected, shall be paid over by the county treasurers to the state treasurer, at the time of making their annual settlement, and shall be paid out by that officer for the purposes aforesaid, upon the warrant of the state auditor.

Distribution of books and apparatus.

SEC 60. It shall be the duty of the county auditor, when the said libraries or apparatus shall be received, to distribute the same to the clerks of the township boards of education, or other local school officers, in their respective counties, having in charge the interests of common schools; and the books and apparatus so furnished, shall be deemed the property of said several boards, or local school officers, to whom the same may have been delivered, and shall not be subject to execution, sale or alienation, for any cause whatever.

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* An act to repeal the school library tax.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the fifty-eighth section of the act of May 4, 1853, to provide for the reorganization, supervision and maintenance of common schools, so far as it relates to the assessment of taxes for the purpose of furnishing and increasing school libraries and apparatus, be and the same is hereby repealed.

SEC. 2. This act shall take effect on its passage.

RICHARD C. PARSONS,
Speaker of the House of Representatives.
ROBERT C. KIRK,
President of the Senate.

March 10, 1860.

SEC. 61. The local boards of education, or other school officers having charge of common schools, shall be held accountable for the preservation of said libraries and apparatus; and they shall have power to prescribe the time of taking and the periods of returning the books belonging to the libraries, and also to assess and collect the damages which may be done to the books by persons entitled to their use; and also to provide for the safe keeping of the school apparatus.

Who accountable for same.

SEC 62. It shall be the duty of the local school boards, or other school officers having charge of schools, to appoint the librarians and determine the places where the libraries shall be deposited, selecting such central points as will best accommodate the schools and families of the districts or sub-districts, as hereinafter provided; and every family in each district or sub district shall be entitled to the use of one volume at a time from the school library, although no member of such family attends any of the schools of the township; and the library shall be open, under the inspection of the librarian, at stated periods throughout the year, to be prescribed by the board of education, or other proper school officers, without regard to the sessions of the schools.

Who to appoint librarian, etc.

Families entitled to books.

STATE SCHOOL FUND.

SEC. 63.*‡ For the purpose of affording the advantages of a free education to all the youth of this state, the state common school fund shall hereafter consist of such sum as will be produced by the annual levy and assessment of one and a half mill upon the dollar valuation, on the grand list of the taxable property of the state; and there is hereby levied and assessed annually, in addition to the revenues required for general purposes, the said one and a half mill upon the dollar valuation, as aforesaid; and the amount so levied and assessed, shall be collected in the same manner as other state taxes, and when collected, shall be annually distributed to the several counties of the state, in proportion to the enumeration of scholars, and be applied exclusively to the support of common schools.

One and a half mills on the dollar to be assessed for school purposes, and collected and distributed.

SEC. 64.† The debts which have heretofore been contracted by any school district for school purposes shall be provided for by the estimate of the proper school boards created under the provisions of this act, and action may be brought against such boards to recover the same. When any judgment shall be obtained against any such school board, it shall be the duty of said board to make an estimate for the district or sub-district, as said board may deem equitable, of the amount required to satisfy such judgment, with interest and costs Said amount so estimated shall be certified to the county auditor, shall be assessed by him upon the district or sub-district, as the case may be, and shall be collected and paid out in the same manner as other school taxes, upon the order of the clerk of said board upon the township treasurer, to satisfy the judgment aforesaid.

Action therefor.

Judgment against school board, how to be paid.

SEC 65. The process, in all suits against any township board of education, or other local officers having charge of any of the public schools under the provisions of this act, shall be by summons, and

Process against school officers.

* As amended May 1, 1854. ‡ Limited by tax law of 1862, to one and three-tenths mills.

† As amended February 18, 1859.

shall be executed by leaving a copy thereof with the clerk or secretary of such board, or other school officers, at least ten days before the return day thereof. And any suit either in favor of or against any such board, or other school officers, shall be prosecuted or defended, as the case may be, by the prosecuting attorney of the proper county, as a part of his official duties.

Duty of prosecuting attorney.

How schools governed under other laws may accept this act.

SEC. 66. The local board of education, or other local officers having charge of schools in any city, township or village, in which common schools have been organized under the act for the better regulation of public schools in cities, towns, etc., or under any special act, shall be, and are hereby authorized, whenever they may deem it expedient, to call a meeting of the qualified voters of any such city, township or village, on giving thirty days public notice thereof, to determine by vote whether the common schools of such city, township or village, shall be conducted and managed in accordance with the provisions of this act; and if a majority of the voters are found to be in favor of the change, then said local board, or other local school officers, shall thereafter proceed, in accordance with the provisions of this act, until their successors shall be elected and qualified; and such city or village may provide by ordinance for the election or appointment of a board of education, prescribing their number and term of office; and such board, when so elected or appointed and qualified, shall, together with the clerk or recorder of such city or village, possess the same powers and discharge the same duties, within the limits of their jurisdiction, as local directors and boards of education in townships.

Certain acts not repealed by this act.

But such acts affected, and how.

SEC. 67. This act shall not be so construed as to repeal, change, or modify in any respect, the several provisions of the "act for the support and better regulation of common schools in the town of Akron," passed February 8, 1847, and the acts amendatory thereto; or the "act for the better regulation of schools in cities, towns, etc.," passed February 21, 1849, and the acts amendatory thereto, nor the several acts creating special school districts, or any other special acts in relation to schools, except that it is hereby made the duty of the several boards of education, or other school officers acting under the provisions of any of the acts to which reference has been made in this section, to make similar reports of school statistics annually, as required of school officers by this act; nor shall it be lawful for any county treasurer to pay over any portion of the school fund to any local treasurer, board of education, or other school officer of any city, township, or village, organized as to schools either under a general or a special law, except on the order of the auditor of the proper county; and no such order shall be drawn by the county auditor, unless the local treasurer, clerk, recorder, or secretary of such board, or other school officer, shall first deposit with said auditor annually, an abstract of the enumeration of scholars and other statistics relative to the schools under their charge, as required by this act, of teachers, local directors, and boards of education in townships.

Power of board to hold real estate.

SEC. 68. The respective township boards of education, and their successors in office, shall have power to take and hold in trust, for the use and benefit of any central or high school, or sub-district school in the township, any grant or devise of land, and any donation or bequest of money or other personal property, to be applied

by the board to the maintenance and support of any such school or schools, according to the intention of the grant or donation.

ACTS REPEALED.

SEC. 69. That "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March sixteenth, one thousand eight hundred and thirty-nine; an "act to abolish the office of superintendent of common schools," passed March twenty-third, one thousand eight hundred and forty; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," of March seventh, one thousand eight hundred and thirty-eight, and the act amendatory thereto, passed March twenty-ninth, one thousand eight hundred and forty-one; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and forty-two; an act further to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March eleventh, one thousand eight hundred and forty-three; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-four; an "act to amend the sixth section of an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-five; an act to amend the act entitled "an act to amend an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-five; "an act authorizing school directors to establish libraries for the use of common schools," passed February twenty-eighth, one thousand eight hundred and forty-six; an act to amend an act passed March eleventh, one thousand eight hundred and forty-three, entitled an act further to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March second, one thousand eight hundred and forty-six; "an act to provide for the appointment of county superintendents of common schools, and defining their duties in certain counties therein named," passed February eighth, one thousand eight hundred and forty-seven; an act further to amend the act entitled "an act to amend an act entitled an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed February eighth, one thousand eight hundred and forty-seven; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-eight; "an act

Repealing section.

to secure the returns of the statistics of common schools," passed January twenty-first, one thousand eight hundred and forty-eight; an act to provide for the establishment of common schools, for the education of black and mulatto persons, and to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight; and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-eight; an act to amend the act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed February twenty-fourth, one thousand eight hundred and forty-eight; an act to amend the eighteenth section of the school law of March seventh, one thousand eight hundred and thirty-eight, passed February fourteenth, one thousand eight hundred and forty-eight; "an act to authorize the establishment of separate schools for the education of colored children and for other purposes," passed February tenth, one thousand eight hundred and forty-nine; an act to amend the act passed February twenty-fourth, one thousand eight hundred and forty-eight, entitled "an act to amend the act entitled an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty-eight, and the acts amendatory thereto, passed March sixth, one thousand eight hundred and forty-nine; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March twelfth, one thousand eight hundred and forty-nine; an act to amend an act entitled "an act for the support and better regulation of common schools, and to create permanently the office of superintendent," passed March seventh, one thousand eight hundred and thirty eight, and the acts amendatory thereto, passed March twenty-fourth, one thousand eight hundred and forty-nine; an act in relation to school district tax, providing for the annual school district meetings, and requiring maps of school districts, passed March seventh, one thousand eight hundred and fifty; an act for the appointment of a state board of public instruction, passed March twenty-second, one thousand eight hundred and fifty; an act supplementary to the act for the appointment of a state board of public instruction, passed March twenty-third, one thousand eight hundred and fifty; an "act providing for school districts, and school district meetings, prescribing the duties of district officers and clerks and treasurers of townships, and increasing the state and county common school funds," passed March twenty-fourth, one thousand eight hundred and fifty-one—be, and the same are hereby repealed: Provided, that the obligations or liabilities incurred, and the rights acquired under the provisions of any of the acts hereby repealed, shall remain, and be in no wise altered or affected, but may be enforced, as if this act had not been passed; and the school officers in the several school districts of the state, as now organized, shall hold their respective offices, and perform their

Liabilities incurred and rights acquired not affected.

respective duties, until the local directors herein provided for shall have been elected and qualified.

JAMES C. JOHNSON,
Speaker of the House of Representatives.
GEORGE REX,
President of the Senate, pro tempore.

SUPPLEMENTAL SECTIONS.

[*Passed April* 17, 1857.]

SEC. 1. No sub-district composed of the fractional parts of two or more townships, which is now organized or may be hereafter organized, shall be dissolved, changed or altered, unless by the concurrent action of the boards of education of the several townships which may have territory included in such sub-district. In raising and expending money in such fractional sub-district, other than for the payment of teachers, the ratio shall be the taxable property of the respective parts of townships in such sub-districts included.

Joint sub-district not to be dissolved without mutual consent

SEC. 2. If the directors of any sub-district dismiss any teacher for any frivolous or insufficient reason, such teacher may bring suit against such sub-district, and if, on the trial of the cause, a judgment be obtained against the sub-districts, the directors thereof shall certify to the clerk of the board the sum so found due, and he shall issue an order to the person entitled thereto, upon the township treasurer, to pay the same out of any money in his hands belonging to said sub-district, and applicable to the payment of teachers. In such suits, process may be served on the clerk of the sub-district, and service upon him shall be sufficient.

Teacher may sue sub-district.

An Act supplementary to an act to provide for the reorganization, supervision and maintenance of common schools, passed March 14, 1853.

[*Passed January* 24, 1859.]

SECTION. 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of education of any incorporated village in this state may unite with the board of education of the township in which such village, or any part of it, be situated, for the purpose of establishing a central or high school within such township. The said board shall jointly agree upon an estimate of the probable cost thereof, and thereupon call separate meetings of the qualified voters of their respective districts, in the manner now provided by the twenty-first section of the act to which this is supplementary; and said meetings, when so convened, shall in all respects be held and conducted in accordance with the provisions of the section aforesaid: Provided that no such central or high school shall be so established, unless a majority of the voters at each of said meetings, shall vote in favor of the same. The further establishment of such central or high school, and the control of the same, when established, shall be ordered and regulated in such manner as shall be agreed upon and directed by said boards of education interested therein.

Union of village board of education with township board to establish central or high school.

How established and controlled.

SEC 2. This act shall take effect and be in force from and after its passage.

WILLIAM B. WOODS,
Speaker of the House of Representatives.
MARTIN WELKER,
President of the Senate.

An Act supplementary to the act entitled "an act to provide for the reorganization, supervision and maintenance of common schools," passed March 1, [14,] 1853.

[*Passed February* 10, 1860.]

Boards of education authorized to condemn school-house sites.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be lawful for any board of education, organized under the act passed March 1, [14,] 1853, entitled "an act to provide for the reorganization, supervision and maintenance of common schools," or organized under the act passed February 21, 1849, entitled "an act for the better regulation of the public schools in cities, towns, &c," in every case where it may be necessary to procure a school house site, and the said board of education and the owner thereof shall be unable, from any cause, to agree upon the sale and the purchase thereof, to make out an accurate survey and description of the parcel of land which the said board of education may desire to appropriate for school house purposes, and file the same with the probate judge of the proper county, and thereupon the same proceedings of appropriation shall be had which are provided for by the act entitled "an act to provide for compensation to the owners of private property appropriated to the use of corporations," passed April 30, 1852, and the various acts amendatory and supplementary thereto.

SEC. 2. This act shall take effect upon its passage.

RICHARD C. PARSONS,
Speaker of the House of Representatives.
ROBERT C KIRK,
President of the Senate.

An Act to prevent and punish malicious injuries to church edifices, school-houses, dwelling-houses, and other buildings.

[*Passed March* 24, 1860.]

Definition and penalty

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That if any person shall wilfully and maliciously injure any church edifice, school-house, dwelling-house, or other building, not being his own property, or in any way disfigure the same with paint or otherwise, or deface the same by painting thereon any obscene words, figures or devices, or by posting thereon any paper or other material bearing such words, figures or devices, he shall be punished by fine not exceeding one hundred dollars, or by imprisonment in the county jail not exceeding ninety days, or both said punishments, in the discretion of the court.

RICHARD C. PARSONS,
Speaker of the House of Representatives.
ROBERT C. KIRK,
President of the Senate.

An Act to prohibit members of boards of education from receiving compensation for their services.

[*Passed April* 29, 1862.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That it shall be unlawful for any member of any board of education, organized under any law of this state, to receive any compensation for his services as member of said board, or to apply any money coming into his hands for the benefit of schools to his own use.

Members to receive no compensation.

SEC. 2. That any person violating either of the provisions of this act shall be liable to be prosecuted therefor, in a civil action to be instituted in the name of the State of Ohio, before any court having competent jurisdiction, and if found guilty in such action, shall be ordered and adjudged by such court to pay any sum not less than the amount of the compensation so unlawfully received, or the money so unlawfully applied, nor exceeding twice any such sum.

Penalty for violation of this act.

SEC. 3. All moneys collected under the provisions of this act shall be paid into the treasury of the township in which the action shall have originated, for the use of common schools in the township.

Fines collected, how disposed of.

SEC. 4 This act shall take effect upon its passage

JAMES R. HUBBELL,
Speaker of the House of Representatives.
B. STANTON,
President of the Senate.

CHAPTER II.

THE AKRON SCHOOL LAWS.

An Act for the support and better regulation of common schools in the town of Akron.

[*Passed February* 8, 1847, *XLVI vol. Stat.* 105.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the electors in the town of Akron, in the county of Summit, qualified to vote for members of the town council, shall, at the time and place of holding the annual election for said members of the town council, in the year one thousand eight hundred and forty-seven, meet and elect six directors of the common school for said town of Akron; two of whom shall serve for one year, two for two years, and two for three years; the order of seniority to be determined by lot, by such directors, after the election; and annually thereafter, at the time and place above specified, there shall, in like manner, be two directors elected, who shall serve for three years, and until their successors are elected and qualified All vacancies which may occur, shall be filled by the town council.

Six directors shall be elected.

SEC. 2. The said directors, within ten days after their first appointment as aforesaid, shall meet and organize, by choosing from their number a president, secretary, and treasurer; and such treasurer, before he enters on the duties of his said office, shall give bond and security, to be approved by the town council, and filed in the

Board of education, officers, powers, etc.

office of the mayor of said town, conditioned for the faithful disbursement of all moneys that shall come into his hands as such treasurer, which bond shall be made payable to the state of Ohio; and when such bond shall be forfeited, it shall be the duty of the town council to sue and collect the same, for the use of the common schools in said town; and the said directors, so organized and qualified, and their successors in office, shall be a body politic and corporate in law, by the name of "The Board of Education of the town of Akron," and, as such, and by such name, shall be authorized to receive all moneys accruing to said town, or any part thereof, for the use and benefit of the common schools in said town; and the said board shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded, in any court of law or equity in this state; and shall also be capable of receiving any gift, grant, donation, or devise, made for the use of the common schools in said town; and said board, by resolution, shall direct the payment of all moneys that shall come into the hands of said treasurer; and no money shall be paid out of the treasury, except in pursuance of such resolution, and on the written order of the president, countersigned by the secretary.

Meetings of the board.

SEC. 3. That said board shall hold their meetings at such time and place as they may think proper; that any four of said board shall constitute a quorum; that special meetings may be called by the president, or by any two members of the board, on giving two days' notice of the time and place of holding such meetings; but at no special meeting, except all the directors be present, shall any resolution in relation to sites for school-houses, or financial resolution, or order be passed, unless the two days' notice as aforesaid be given, and the subject or subjects to be acted on, be specified in the notice, and a quorum of at least four members be present.

Shall have control of common schools, etc., in Akron.

SEC. 4. That said board of education shall have the entire management and control of all the common schools in said town of Akron, and of all the houses, lands, and appurtenances already provided and set apart for common school purposes, as well as those hereafter to be provided for the same purposes; and the said town of Akron, from and after the first Tuesday in June next, after the passage of this act, shall constitute, in law, but one school district; and all moneys accruing to said district for school purposes, under any law of the state, shall be paid over to the treasurer for said board of education.

Number and grade of schools; admission of pupils, etc.

SEC. 5. It shall be the duty of said board of education, so soon as they may realize sufficient funds for the purpose, to establish within the bounds of the town corporate of Akron, six or more primary schools, to be located in different parts of the town, so as best to accommodate the inhabitants, in which the rudiments of an English education shall be taught. It shall be the further duty of said board to establish a central grammar school in said town, where instruction shall be given in "the various studies and parts of study" not provided for in the primary school, and yet requisite to a respectable English education. To each school in this system there shall be gratuitous admission for the children, wards, and apprentices of all residents of the town corporate of Akron, and such other persons in the immediate vicinity as may own property, charged with a school tax in said town corporate of Akron, with the following restrictions, namely: No pupil shall be admitted to the grammar school

who fails to sustain a thorough examination in the studies of the primary school; and the teacher shall have power, in either school, with the advice and direction of the board of education, to exclude for misconduct, in extreme cases, and to classify the pupils as the best good of the school shall seem to require: Provided, however, that said board of education shall not make any rules which will exclude from said primary schools any scholar who, by the general laws of this state, would be entitled to admission into the common schools, within said town, and said board shall not so appropriate the school fund, which, by the provisions of this act, shall come under their control, as to reduce the amount applicable to the support of said primary schools, below the sum to which, under the general laws of this state, the common schools within said town would be entitled.

Power of board.

SEC 6. The said board of education shall have power to make and enforce all necessary rules and regulations for the government of teachers and pupils in said schools, to employ teachers, male and female, and pay them a suitable compensation, to purchase all necessary books and apparatus, to select sites for school-houses, and superintend the building of the same upon their own plan, and to pay for the lands, and houses, and furniture, as well as other expenses of said school system, from the public moneys in the hands of the treasurer.

Town council to levy taxes for school purposes.

SEC 7. The said board of education, within thirty days after their organization, shall report to the town council of Akron the number and description of buildings necessary for the purposes of the common schools in said town, which report shall be in writing, and shall specify the amount of money necessary to be raised to meet the expense of erecting such buildings; and such board shall also specify, in said report, the amount of money necessary to be raised in addition to the money accruing to said town under the general school laws of the state, to defray all the other expenses of said school system during the current year; and thereupon the said town council shall proceed to levy a tax sufficient to meet such expenses of buildings and repairing school-houses, and the expenses attendant upon the maintenance of said free schools in Akron, during the whole year, customary vacations only excepted; said tax to be levied and collected as other taxes of said town are or may be collected. *And it shall be the duty of said board, on or before the first Monday in April, in every year thereafter, to make report in writing to the town council, of all moneys received, how and for what purpose expended, with the proper vouchers, and such other information in relation to said schools as they may deem important, specifying in said annual report the amount of money necessary to be raised by taxation, to defray the expenses of said school system for the current year; and said town council shall, annually, upon the coming in of such report, and within thirty days thereafter, proceed to levy a tax sufficient to meet such expenses, to be levied and collected as other taxes of said town † And the town council shall cause all such reports of the board of education to be published, or so much thereof as they may deem necessary, the reports

Reports of board.

*Modified: see section 3 of the act of January 28, 1848, chapter III. Tax not to exceed four mills on the dollar: see section 1 of same act.

†See tax law passed April 30, 1862.

Titles to board

themselves to be left with the mayor of the town, open to public inspection.

SEC. 8. All legal titles to lands and houses, and other property used for common school purposes in said town of Akron, shall vest in the town council of Akron at the taking effect of this act, and all titles acquired thereafter shall be in the name of said town council; and said town council shall have power to sell, lease, and convey, any and all of the lands and tenements held under and by virtue of this act, and to purchase other lands and tenements in more eligible positions, by and with the advice of said board of education, but not otherwise.

Examiners of teachers and schools.

SEC. 9. The town council shall, immediately after the appointment of directors, as hereinbefore provided, appoint three competent persons to serve as school examiners of said town, all of whom shall be citizens of Akron; one to serve until the first Tuesday in June, one thousand eight hundred and forty-eight; one until the first Tuesday in June, one thousand eight hundred and forty-nine; and one until the first Tuesday in June, one thousand eight hundred and fifty, and until their successors are qualified; and annually, at the first regular meeting of the town council, after the annual election for members of that body, they shall appoint one person for examiner, to serve for three years, and until his successor is qualified; and the council shall fill all vacancies that may occur by death, removal, or otherwise. The examiners, or any two of them, shall examine such persons as may apply for that purpose; and if they find the applicant qualified, they shall give him a certificate, naming the branches he is qualified to teach, that they have carefully inquired into his character, and believe it to be moral and good, and that they believe him to be well qualified to govern and teach; they shall, also, in every case where two of their number concur, have power to annul any certificate previously given, and the person holding the same shall be discharged from the public schools in said town: they shall, also, separately or otherwise, together with such other persons as may be appointed by the mayor, visit said schools at least as often as once in every quarter, observe the discipline, mode of instruction, progress of the scholars, and such other circumstances as they may deem of interest; and, semi-annually, at such times as the board of education shall [appoint.] they shall report their proceedings to the town council, and also to the board of education, with such suggestions as they may think proper, the publication of which shall be in the discretion of the town council.

Reports.

Public examination of schools.

SEC. 10. Annually, at such time as the board shall appoint, public examinations of all the schools shall be had, under the direction of the mayor, council, the board of education, and the examiners.

Repealing clause.

SEC. 11. So much of the general school law, and so much of any and all other laws of this state, general or local, as may be inconsistent with this act, or any of its provisions, is hereby repealed as to said town of Akron.

Extended to Dayton.

SEC. 12. The power conferred upon the board of education of the town of Akron, in the fifth section of this act, is hereby conferred upon the managers of the common schools of the city of Dayton.

Right of repeal

SEC. 13. Any future legislature may alter, amend, or repeal this act.

WILLIAM P. CUTLER,
Speaker of the House of Representatives.

EDSON B OLDS,
Speaker of the Senate.

CHAPTER III.

An act to amend the act entitled "An act for the support and better regulation of Common Schools in the town of Akron," passed February 8, 1847.

[*Passed January* 28, 1848, *XLVI vol. Stat.* 110.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the amount of tax hereafter to be assessed to defray the expense of the school system, introduced into said town by virtue of the act to which this is an amendment, shall not exceed in any one year, four mills on the dollar of the taxable property in said town. Amount of tax

SEC. 2. The board of education of the town of Akron shall have full power and authority to determine what branches of education shall be taught in any and all of said schools under their management and control; and said board shall also have power, at their discretion, to restrict the right of admission into any and all of said schools, to the children, wards, and apprentices of actual residents, within the limits of the town corporate of Akron, with power to admit scholars from abroad, upon such terms and conditions as said board shall see fit to prescribe. Powers of the board of education.

SEC. 3. That on or before the first Monday of June, in each year, it shall be the duty of the said board of education to make known to the auditor of the county of Summit, the amount of tax which they may want levied for school purposes during the current year; and thereupon it shall be the duty of said county auditor to assess the taxable property in said town of Akron, as the same appears upon the grand list; and the said tax shall be collected by the county treasurer at the same time with the state and county taxes, and in the same manner; and, when collected, the amount shall be paid over to the treasurer of said board of education. Duties of auditor and treasurer.

SEC. 4. That so much of the act to which this is an amendment as conflicts with the provisions of this act be and the same is hereby repealed. Repealing clause.

JOSEPH S. HAWKINS,
Speaker of the House of Representatives.
CHARLES B. GODDARD,
Speaker of the Senate.

CHAPTER IV.

An act to provide for extending the provisions of an act entitled "An act for the support and better regulation of common schools in the town of Akron," and the amendatory acts thereto, to the cities and incorporated towns of this state.

[*Passed February* 14, 1848, *XLVI vol. Stat.* 48.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That every incorporated town or city in this state, shall have the provisions of the act entitled "an act for the support and better regulation of common schools in the town of Akron," and the All incorporated towns may organize under preceding acts, and how.

amendatory act thereto, passed by the forty-sixth general assembly of this state, extended to all or any of the said incorporated towns or cities, wherever two-thirds of the qualified voters thereof shall petition the town or city council in favor of having the provisions of said acts so extended.

Election of directors.

SEC. 2. That whenever two-thirds of the qualified voters of any city or incorporated town shall petition the town or city council in favor of having the provisions of said acts extended to said city or incorporated town, the electors qualified to vote for members of the town or city council, shall assemble at the time and place within said town or city, of which at least ten days' previous notice shall be given by the city or town council, by posting written or printed notices in at least three of the most public places in said city or incorporated town, and then and there proceed to the election of six directors, by ballot, who shall serve, and in all respects be governed by the provisions of the act entitled "an act for the support and better regulation of common schools in the town of Akron," and the act amendatory thereto; and the common schools in said city or incorporated town shall, in all respects, be governed and organized according to the provisions of said acts.

How number of voters ascertained.

SEC. 3. That the last preceding election in said city or incorporated town, shall be the basis upon which to determine the number of qualified voters.

Repealing clause.

SEC. 4. That all acts, or parts thereof, inconsistent with the provisions of this act, are hereby repealed: *Provided*, that this act shall not extend to, nor be in force in the city of Cincinnati.

JOSEPH S. HAWKINS,
Speaker of the House of Representatives.
CHARLES B. GODDARD,
Speaker of the Senate.

CHAPTER V.

An act to amend an act entitled "an act for the support and better regulation of common schools in the town of Akron," passed February 8, 1847, and the acts amendatory thereto.

[*Passed March* 15, 1849, *XLVII vol. Stat.* 45.]

Boards of education may adopt certain laws.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the board of education in any city, town, or village, which has adopted the act entitled "an act for the support and better regulation of common schools in the town of Akron," passed February 8, 1847, and the acts amendatory thereto, may adopt the eleventh, twelfth, and fifteenth sections of the act entitled "an act for the better organization of the public schools in cities, towns," etc., passed February 15, 1849, whenever, in the opinion of said board of education, the educational interests of such city, town, or village, may require it.

SEC. 2. All acts, or parts thereof, inconsistent with the provisions of this act, are hereby repealed.

JOHN G. BRESLIN,
Speaker of the House of Representatives.
BREWSTER RANDALL,
Speaker of the Senate.

An act supplementary to an act entitled "an act for the support and bet'er regulation of common schools in the town of Akron," passed February 8, 1847, (passed April 12, 1861).

[*Passed March* 19, 1860.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the boards of education in the town of Akron, or in any city, town or village, which has adopted the act entitled "an act for the support and better regulation of common schools in the town of Akron," passed February 8, 1847, shall have power at their discretion, to provide for the establishment of German schools for the instruction of such youth as may desire to study the German language, or the German and English languages together.

SEC. 2. This act shall take effect and be in force on its passage.

RICHARD C. PARSONS,
Speaker of the House of Representatives.
ROBERT C. KIRK,
President of the Senate.

An act supplementary to an act entitled "an act for the support and better regulation of common schools in the town of Akron, passed February 8, 1847.

Swan's Rev. Stat. 854.

[*Passed March* 19, 1860.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the board of examiners for any city, town or village which has adopted the above recited act, and the acts amendatory thereto, shall state in the certificates they issue to teachers the period of time for which said certificates shall be valid, which period shall not be less than six months nor more than two years, and no certificate shall be valid for any other period than that named in it.

Certificate of examiner to state time such certificate shall be valid.

SEC. 2. No person shall be permitted to teach in any of the public schools of said city, town or village, without such certificate, or for any other time than that specified in said certificate.

No person to teach without certificate.

SEC. 3. This act shall be in force from and after its passage.

RICHARD C. PARSONS,
Speaker of the House of Representatives.
ROBERT C. KIRK,
President of the Senate.

CHAPTER VI.

GENERAL ACT FOR SCHOOLS IN CITIES, TOWNS, ETC.

An act for the better regulation of the public schools in cities, towns, etc.

[*Passed February* 21, 1849, *XLVII vol. Stat.* 22.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That any incorporated city or town in the state, or any incorporated town or village, except such city, town or village, as is now, in whole or in part, governed as to schools by some special law heretofore passed, containing within the town or village plot, as laid out and recorded, two hundred inhabitants or more, with the

Towns of 200 inhabitants may be single school districts.

territory attached, or hereafter to be attached to said city, town, or village, for school purposes, may be organized into and established as a single school district, in the manner and with the powers hereinafter specified; but the provisions of this act shall not apply to any city, town or village, or any part thereof, which is now governed as to schools by any special law.

Qualified voters to vote for or against the adoption of this act.

SEC 2. That, in order to such organization, written notices shall be posted up in three or more of the most public places in said contemplated district, signed at least by six resident freeholders of the same, requesting the qualified electors in said district to assemble upon a day, and at some suitable place in said district, to be named in said notices, then and there to vote, by ballot, for or against the adoption of this act, which notice shall be so posted up at least ten days next prior to said meeting.

Manner of casting such vote.

SEC. 3. That the electors assembled at said time and place shall proceed to appoint a chairman, assistant chairman, and clerk, who shall be judges of said election. That the electors in favor of the adoption of this act for said district, shall write upon their ballots, "school law," and those opposed thereto shall write upon their ballots, "no school law;" the adoption or rejection of this act to be determined by a majority of the votes to be cast in the manner aforesaid.

Directors to be chosen.

SEC. 4. That in case a majority of the votes shall have been cast for said law, the electors of said districts shall assemble at the place last aforesaid, within twenty days from the time of the adoption of said act, of which at least ten days' previous notice shall be given by said chairman and clerk, in the manner aforesaid, and shall then choose, by ballot, six directors of the public schools of said district, two of whom shall serve for one year two for two years, and two for three years, the time that each shall serve to be designated on the ballots; and annually thereafter there shall be chosen, in the same manner, two directors, each of whom shall serve for three years, and until their successors shall be elected and qualified; such intermediate vacancies as may occur to be filled by the acting directors until the next annual election, when such vacancies shall be filled by the electors.

Directors to organize.

SEC. 5. That said directors, within ten days after their appointment as aforesaid, shall meet and organize by choosing from their number a president, secretary and treasurer; that said treasurer, before he enters upon the duties of his office, shall give bond payable to the state of Ohio, with security, to be approved by said board, and to be by them kept, conditioned for the faithful discharge of his duties as such treasurer.

Their power and duties.

SEC. 6. The said directors, and their successors in office, shall be a body corporate, by the name of the board of education of said city, town, or village, and, as such, and by such name, shall receive all moneys, and other property, belonging or accruing to said district, or to said city, town, or village, or any part of the same, for the use or benefit of the public schools therein; and the said board shall be capable of contracting and being contracted with, suing and being sued, pleading and being impleaded, in any court of law or equity; and also shall be capable of receiving any gift, grant, bequest, or devise, made for the use of the public schools in said city, town or district, and all moneys accruing to said city, town or district,

for school purposes, under any law of this state, shall be paid over to the treasurer of said board of education.

SEC. 7. Said board of education may hold stated meetings at such times and places in said district as they may appoint, four members of said board, at all meetings thereof, constituting a quorum for business; that special meetings thereof may be called by the president, or by any two members, on giving one day's notice of the time and place of the same; and said board, by resolution, shall direct the payment of all moneys that shall come into the hands of the treasurer, and no money shall be paid out of the treasury except in pursuance of such resolution, and on the written order of the president, countersigned by the secretary.

Meetings of the board.

Money, how paid out.

SEC. 8. That whenever said board shall deem it necessary to purchase or erect a school-house, or school houses, for said district, or to purchase sites for the same, they shall call a meeting of the legal voters in said district, by giving at least ten days' notice of the time, and place, and object of said meeting, in some newspaper printed in, and in general circulation in such district, if any such there be, and if there be no such newspaper, then by posting up written or printed notices thereof, at five or more of the most public places in said district, and the president of said board, and in his absence one of the other directors, shall act as chairman of said meeting, and said meeting may determine, by a majority vote, upon the erection of a school-house or school-houses, and the purchase of a site or sites therefor, and the amount of money to be raised for the purpose aforesaid, and the time, or times when the same shall be paid, which money, so voted, shall be thereupon certified by the board of education, by its chairman and secretary, to the auditor of the county, and shall be assessed in said district, collected and paid over to the treasurer of said district, in the same manner as the tax hereinafter provided for in the twelfth section of this act.

School houses, how built.

SEC. 9. It shall be the duty of said board, so soon as the means for that purpose can be provided, to establish in said district an adequate number of primary schools; to be so located as best to accommodate the inhabitants thereof, and in which the rudiments of education shall be taught, and it shall be the further duty of said board to establish in said district a suitable number of other schools of a higher grade or grades, wherein instruction shall be given in such studies as may not be provided for in the primary schools, the number of schools, and also of the different grades thereof, to be determined by said board; and it shall be the further duty of said board to decide what branches shall be taught in each and all of said schools, provided that no other language than the English or German shall be taught therein, except with the concurrence of two-thirds of said board.

Board to establish primary schools.

High schools.

Branches to be taught.

SEC. 10. Admission to said schools shall be gratuitous to the children, wards and apprentices of all actual residents in said districts, who may be entitled to the privileges of the public schools, under the general laws of this state, provided that said board shall have power to admit to said schools other pupils, upon such terms, or upon the payment of such tuition, as they may prescribe.

What scholars admitted.

SEC. 11. Said board shall have power to make all necessary regulations for said schools, to prescribe and enforce rules for the admission of pupils into the same, not inconsistent with the preced-

General powers of the board.

ing section, and the examination that pupils must pass preparatory to admission into the schools of higher grade than the primary; to sub-divide said school district, if they shall think proper; to select sites for school-houses; to superintend the building of the same, and to pay therefor, their appurtenances, furniture and apparatus, to borrow money for the erection of school-houses, upon a majority vote of said district therefor, and to incur all other expenses of said school system, and pay the same from the public moneys of said district.

How long schools to be kept in each year.

SEC. 12. It shall be the duty of said board to keep said schools in operation not less than thirty nor more than forty-four weeks of each year, to determine the amount of the annual tax to be raised for the purpose aforesaid, including all the necessary expenses of said schools, except for the erection of school houses and the purchase of sites; and on or before the first day of July, of each year, to make known the amount of such tax to the auditor of the county in which said district is situate, and thereupon it shall be the duty of said auditor to assess the same upon the taxable property of the said district as the same appears on the grand list in his office, and the said tax shall be collected by the county treasurer in the same manner and at the same time with the state and county taxes, and when collected shall be paid over to the treasurer of said board: Provided, however, that the tax to be assessed under this section shall not exceed four mills on the dollar upon the taxable property of said district, as the same appears upon the grand list: Provided, further, that in case the amount so authorized to be raised, together with the other school moneys of said district, shall be insufficient to support said schools for the portion of the year mentioned in this section, that said board of education may require such sum as may be necessary to support the same for the residue of said time, to be charged at the discretion of said board upon the tuition of the pupils attending such schools: Provided, however, that the children of indigent parents, or orphans who are unable to pay such charges, shall not be excluded from said schools for the non-payment of the same; and it shall be the further duty of said board to keep an accurate account of their proceedings, and of their receipts and disbursements for school purposes, and at the annual meeting for the choice of directors in said district to make report of such receipts, and the sources from which the same were derived, and of said disbursements, and the objects to which the same were applied; and they shall also make report at the same time of such other matters relating to said schools as they may deem the interest of the same to require.

School tax, how levied and collected.

Not to exceed four mills on the dollar.

Board shall appoint school examiners.

SEC. 13. That said board of education, within twenty days after their election, shall appoint three competent persons, citizens of said district, to serve as school examiners of the public schools therein, one to serve for one year, one for two years, and one for three years, from the time of their appointment, and until their successors shall be appointed; and annually thereafter said board shall appoint one examiner, to serve for three years, and until his successor is appointed and qualified; and said board shall fill all vacancies that may occur from death, removal, or otherwise. Said examiners, or any two of them, shall examine any person that may apply for that purpose, with the intention of becoming teachers in any of the schools

Duty of examiners.

in said district; and if they find the applicant, in their opinion, qualified to teach in any of said schools, and to govern the same, and of good moral character, they shall give the said applicant a certificate, naming the branches in which the holder of said certificate was found qualified to teach, and no person shall be permitted to teach in said schools without such certificate; and said examiners may, in all cases where two of their number concur, have power to annul such certificate, and, when so annulled, the person holding the same shall be discharged as a teacher of said schools; said examiners shall also, separately or otherwise, together with said board of education, or any of them, or such persons as they may appoint or invite, visit said schools as often as once in every term, and observe the discipline, mode of teaching, progress of the pupils, and such other matters as they may deem of interest, and make such suggestions, and report thereupon to said board, as they may think proper, which report may be published at the discretion of said board.

Acts repealed.

SEC. 14. Upon the adoption of this act in the manner herein provided, by any city, town, village, or district, all laws now in force therein, inconsistent herewith, are hereby repealed.

Treasurer may collect charges for tuition.

SEC. 15. That said board of education, or the treasurer thereof, shall have power to collect any charge or account for tuition, in the same manner as the treasurer of any common school district in this state is now, or may hereafter be, authorized to collect any such charge or account.

JOHN G. BRESLIN,
Speaker of the House of Representatives.
BREWSTER RANDALL,
Speaker of the Senate.

CHAPTER VII.

An act to amend the act entitled "an act to provide for the organization of cities and incorporated villages," passed May 3, 1852.

[*Passed March* 11, 1853. *LI vol. Stat.* 364.]

Certain appropriations not authorized.

SEC. 12. That the ninety-eighth section of said act be and the same is hereby so amended as to read as follows: That the council of any municipal corporation shall not authorize any loan or appropriation not predicated on the revenues of the corporation for the current fiscal year, and shall not authorize any order or appropriation of money when there is not in the city treasury money unappropriated sufficient to pay such appropriation; and any appropriation otherwise made or authorized shall be held and deemed utterly void and of no effect as against said corporation: Provided, however, that for the purpose of purchasing necessary grounds and erecting suitable school buildings for the use of public schools, the council of any such corporation may, at the request of the board of education of said corporation, make sufficient appropriation therefor, and shall have power to borrow money upon the credit of such corporation, sufficient for the aforesaid purposes, at such rates of interest as said

Council may borrow money for school purposes.

Loan, how per-

council may deem proper; and, for the purpose of effecting such loan, the said council shall have power to pledge the faith of said corporation for the payment of both principal and interest, including the power to levy a tax for the payment of the same, whenever the same may become due, and to make and execute such bonds, or other evidences of debt, and payable at such times and places as shall be agreed upon by the parties so contracting, which said bonds or other evidences of debt may be made transferable and redeemable in such form and at such times and places as may be therein designated; and the necessary grounds shall be procured, and the said school buildings hereby authorized shall be constructed under the direction of, and in accordance with, a plan or plans furnished by the board of education of said corporation. * * * *

School buildings, how constructed.

CHAPTER VIII.

An act to amend the "act for the better regulation of the Public Schools in cities, towns, etc.," passed February 21, 1849.

[*Passed March* 13, 1850. *XLVIII vol. Stat.* 40.]

Extending act in reference to public schools.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the act for the better regulation of the public schools in cities, towns, etc., passed February 21, 1849, be and the same is hereby extended to incorporated townships and to school districts, now or hereafter to be organized, which shall adopt the same in the manner specified in the second and third sections of said act: Provided, however, that said act shall not be so extended to any township or school district containing less than five hundred inhabitants, unless said school district consists, in whole or in part, of an incorporated town or village.

Single school districts.

SEC. 2. Townships and school districts to which said act may be extended in the manner aforesaid, shall thereafter be known and recognized in law as single school districts, with all the powers, rights and franchises which, for educational purposes, are or may be conferred upon incorporated cities, towns and villages, in virtue of the act aforesaid; and the board of education of such townships and school districts shall be elected and organized in the same manner as is provided in the fourth and fifth sections of said act, and shall have like powers, rights and privileges, and perform like duties, as boards of education of cities, towns, etc., under the act aforesaid.

Board of education.

Title to real estate to vest in board.

SEC. 3. The title to all real estate, and other property, belonging, for school purposes, to any city, town, village, township, or district, or to any part of the same, which is or may be organized into a single school district, in accordance with this act, or the act to which this is an amendment, shall be regarded in law as vested in the board of education thereof, for the support and use of the public schools therein, and said board may dispose of, sell and convey said real estate, or any part of the same, by deed, to be executed by the president of said board, upon a majority vote for such sale at any regular meeting of the electors of said district.

SEC. 4. The board of education of any city, town, village, township, or school district, organized for the support of schools under this act, or the act to which this is amendatory, or the act for the support and better regulation of common schools in the town of Akron, and the acts amendatory thereto, or under any special local act, shall have authority to exclude from the public schools in such city, etc., all children under the age of six years

Board to have power to exclude children under six years of age.

BENJAMIN F. LEITER,
Speaker of the House of Representatives.
CHARLES C. CONVERSE,
Speaker of the Senate.

CHAPTER IX.

An act to provide for the completion of certain contracts heretofore made by school directors.

[*Passed February* 6, 1854, *LII vol. Stat.* 17.]

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That in all cases where pursuant to law, contracts have been made or entered into for the sale of school-house sites or lands, the property of any school district heretofore existing in this state, and the sale remains to be perfected by conveyance, the township board of education, in the township where such property may be situate, shall be authorized to complete the same by executing a conveyance in the manner prescribed in section eleven of the act entitled an act to provide for the reorganization, supervision and maintenance of common schools, passed March 14, 1853, on full compliance therewith by the purchaser or purchasers.

To empower township boards of education to complete certain contracts.

F. C. LEBLOND,
Speaker of the House of Representatives.
ROBERT J. ATKINSON,
President of the Senate, pro tem.

CHAPTER X.

An act relating to common schools.

[*Passed April* 10, 1856, *LIII vol. Stat.* 200]

WHEREAS, certain boards of education, organized under an act for the better regulation of public schools in cities, towns, etc., passed February 21, 1849; and certain boards of education organized under an act to provide for the reorganization, supervision and maintenance of common schools, passed March 14, 1853, acting under said acts have by agreement between said boards, under the act passed February 21, 1849, and the boards, under the act passed March 14, 1853, made annexations and transfers of territory to and

Preamble.

from the districts provided for in said acts respectively for the promotion of education, according to the true intent and meaning of said acts; and whereas, doubts exist as to the legality of such annexations and transfers of territory; therefore,

Transfers made valid.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That all annexations or transfers of territory to or from the districts provided for in the said act passed February 21, 1849, and in the said act passed March 14, 1853, made pursuant to said acts respectively, and the agreement of the boards of education organized under said acts respectively, heretofore made or agreed upon, or which shall hereafter be thus made or agreed upon, shall be held to be as valid as if the same had been specially and more particularly provided for in said acts, or the acts amendatory thereto.

Power to transfer.

SEC 2. *Be it further enacted*, That the boards of education of any township, and the boards of education of any city, or incorporated village, or union school district created by any law of this state, shall have power according to the general provisions of said act passed March 14, 1853, by mutual agreement between the township board and the city or village board to transfer territory to or from the respective districts under the control of said respective boards.

SEC 3. That this act shall be in force from and after its passage.

N. H. VAN VORHES,
Speaker of the House of Representatives.
THOMAS H. FORD,
President of the Senate.

CHAPTER XI.

An act providing for recording, printing, and distributing the journals of the general assembly, and the laws and public documents.

[*Passed April* 8, 1856, *LIII vol. Stat.* 173.]

When official reports to be made.

SEC. 6. All county, township, city and village officers, and all officers and boards of officers, of all state institutions and buildings, and all officers connected with the public works of the state, and all corporations (except such as by their characters are required to make their reports at some other specified time) which are now, or may hereafter be required by law, to make annual reports for any purpose to any state officer or officers, shall make out the same on or before the fifth day of November of each year, and forthwith transmit the same to the proper officer or officers. For the purpose of making out all such reports as come within the provisions of this section, the year shall begin on the first day of November of each year, and end on the last day of October of the succeeding year; provided, that the school year shall begin on the first day of September annually, and close on the last day of the following August; and all school officers and township officers acting as such, who are or may be required to make annual reports to the county auditor, shall make out the same and transmit them to the county auditor on or before the first day of October following the expiration of the school year.

School year.

SEC. 7. All state officers, and boards of officers, and the officers of all such institutions and buildings, as are now, or may hereafter be required to make annual reports to the general assembly, or to the governor, shall hereafter make such reports to the governor on or before the twentieth day of November of each year, and the governor shall cause the same to be printed as soon thereafter as practicable, by the printer having the contract for this branch of the public printing, and the governor shall lay before the general assembly all such reports, in printed form, at the same time that he lays before it his regular message. But nothing in this section, or in this act, shall be held to modify, in any respect, the existing laws in relation to the annual report of the state board of agriculture.

Reports of state officers.

CHAPTER XII.

TEACHERS' INSTITUTES.

An act to encourage teachers' institutes.

[*Passed February* 8, 1847, *XLV vol. Stat.* 67.]

WHEREAS, it is represented that, in several counties, associations of teachers of common schools, called teachers' institutes, have been formed, for the purpose of mutual improvement and advancement in their profession, which, it is represented, have already accomplished much to elevate the standard of common school instruction in their respective counties; therefore, in order to encourage such associations, and thus promote the cause of popular education,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That in the several counties mentioned in the fifth section, in which such associations now exist, or in which such associations shall be hereafter formed, it shall be lawful for the county commissioners of said counties to appropriate the annual avails, or any part thereof, of the fund provided for in the third section of the act passed March 19, 1848, entitled "an act declaratory of, and amendatory to, an act entitled 'an act providing for the distribution and investment of this state's proportion of the surplus revenue,'" passed March 28, 1837, for the purposes of such associations.

County commissioners may appropriate annual proceeds of surplus revenue.

SEC. 2. The moneys so appropriated shall, upon the order of the county auditor, be paid over to, and expended by the board of school examiners of the proper county; the one-half thereof, at least, to the payment of suitable persons as instructors and lecturers to such associations, and the balance to the purchase and support of a suitable common school library, for the use of such associations.

Moneys to be paid to lecturers, and for library.

SEC. 3. Every teacher of common schools of the county, and every person of the county intending to become a teacher of common schools within the next twelve months, shall have the right, without charge for instruction, to attend the meetings of such associations, and enjoy all their benefits.

Who shall have a right to attend the meetings of associations.

SEC. 4. It shall be the duty of all the county boards of school examiners, in the several counties mentioned in the fifth section, to

County boards of examiners to report to secretary of state

report, annually, to the secretary of state, during the month of December, the number of male and female teachers examined by them during the year, the number of certificates given, how many authorized the teaching of reading, writing, and arithmetic only; and when moneys shall have been received by virtue of this act, they shall also report how it has been expended, and with what results.

SEC. 5. This act shall be in force only in the counties of Ashtabula, Lake, Geauga, Cuyahoga, Erie, Lorain, Medina, Trumbull, Portage, Summit, Delaware.

WILLIAM P. CUTLER,
Speaker of the House of Representatives.
EDSON B OLDS,
Speaker of the Senate.

CHAPTER XIII.

An act to amend an act to encourage teachers' institutes, and to extend the provisions of the acts providing for teachers' institutes, and county superintendents, to the several counties of this state.

[*Passed February* 24, 1848, *XLVI vol. Stat.* 86.]

Former law made general.

SEC. 1. That the provisions of the act entitled "an act to encourage teachers' institutes," and the act entitled "an act to provide for the appointment of county superintendents of common schools, and defining their duties in certain counties therein named," passed February, 1847, be and the same are hereby extended to all the counties in this state.

Former act in reference to libraries amended.

SEC. 2. That the second section of the act entitled "an act to encourage teachers' institutes," passed February 8, 1847, is hereby so amended that all money used under the provisions of said section, in purchasing libraries, shall be used in purchasing and supporting suitable common school libraries, for the several common school districts in the several counties in this state that may be in possession of the funds named in the first section of this act.

JOSEPH S. HAWKINS,
Speaker of the House of Representatives.
CHARLES B. GODDARD,
Speaker of the Senate.

CHAPTER XIV.

An act to amend an act entitled "an act to encourage teachers' institutes," passed February 8, 1847.

[*Passed February* 16, 1849, *XLVII vol. Stat.* 19.]

County commissioners may appropriate $100.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That the county commissioners of the several counties mentioned in the act to which this is an amendment, shall be and they are hereby authorized, at their June session in each year, whenever, for any cause, the sum of one hundred dollars shall not arise from the means and source as provided in the first section of the

aforesaid act, to appropriate such sum as shall be sufficient to make up said sum of one hundred dollars, from any moneys in the county treasury not otherwise appropriated.

SEC 2. That in case there are no moneys at the disposal of the said county commissioners, they are hereby authorized to levy a tax (in the usual manner) for the purposes named in the preceding section.

May levy a tax.

SEC. 3. That no part of the money appropriated by virtue of this act, or of the act to which this is an amendment, shall be ordered by the county auditor to be paid over, except upon the petition of at least forty practical teachers, who shall therein declare their *bona fide* intention to attend such association within their respective counties, and who shall also, at the time of so petitioning as aforesaid, be permanent residents of the county in which application shall be made; and which payment and appropriation shall also be approved and recommended in writing, indorsed upon said petition by the board of school examiners of such county.

Money, how and for what appropriated.

SEC. 4. That said sum of one hundred dollars, or any part thereof, shall not be ordered by the county auditor to be paid over as aforesaid, until said teachers shall have first raised and paid over, or secured to be paid over, to said board of school examiners, for the purposes and benefit of such association, at least one-half of the sum for which they shall so petition said county auditor, and which payment, or security for payment, as aforesaid, shall be made known to said auditor by the receipt, or certificate in writing of said board of school examiners.

Not to be paid over until teachers raise half the amount asked for.

JOHN G. BRESLIN,
Speaker of the House of Representatives.
BREWSTER RANDALL,
Speaker of the Senate.

An act supplementary to an act to encourage teachers' institutes, passed February 8, 1847, and the several amendments thereto, passed April 5, 1851.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That where an association of teachers of common schools, called a teachers' institute, has been or may be formed by teachers of two or more contiguous counties, the county commissioners of each of said counties, are hereby authorized to appropriate for the use of said association, a sum not exceeding one hundred dollars in any one year, from any moneys in the county treasury not otherwise appropriated.

SEC 2. The moneys so appropriated shall, upon the order of the county auditor, be paid over to the committee of said institute: Provided, that no part of the money shall be ordered by the county auditor to be paid over, except upon the petition of at least twenty practical teachers, residents of the county in which appropriations shall be made, who shall therein declare their intention to attend the meeting of said association.

SEC. 3 It shall be the duty of the officers of every such teachers' institute to report at the close to the school examiners of the proper county, the name of such teacher in attendance, the time of attendance, and the amount paid for the use of the institute to the state commissioner of common schools, within thirty days after every meeting of the institute, an account of the moneys received and expended by them, and always to report such other matter relating to the institute as the commissioner may require.

CHAPTER XV.

SALE OF SECTION SIXTEEN.

An act to regulate the sale of School Lands and the surrender of permanent leases thereto.

[*Passed April* 16, 1852. *L vol. Stat.* 168.]

Section sixteen school lands may be sold.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That all those lands granted by the congress of the United States for school purposes, known as section sixteen, together with all such as have been granted in lieu of said section sixteen, may be sold, and such sale shall be regulated by, and conducted according to, the provisions of this act.

How vote of the citizens shall be taken.

SEC. 2.* In cases where there has been no vote taken for the sale of any such land, the trustees of any original surveyed township to which such lands may belong shall, at least thirty days prior to the taking of any such vote, cause not less than eight notices to be posted up in as many of the most public places of such township, notifying the legal voters resident therein to meet at some convenient place and time therein specified, and then and there cast their ballots for or against the sale of any such lands belonging to such township; and if such vote result in a refusal to sell said lands, the trustees may, in the same manner, authorize the taking of a subsequent vote or votes as often as they may deem proper: Provided, that no such subsequent vote shall be taken until one year shall have elapsed since the last preceding vote.

Same subject.

SEC. 3. The trustees of the township shall preside at the taking of such ballots, and shall appoint two clerks, who shall keep two poll books, containing the names of the voters and the result of the ballot, which poll books shall be signed by the trustees and clerks; and in case such ballot shall result in favor of a sale, the trustees shall, within ten days after such election, deposit one of said poll books with the auditor of the county within which such lands (or the greater portion thereof) may be situated, with a copy of the notice given, and the affidavit of one or more of the trustees, stating the manner of giving said notices, and the time and place of putting up the same; which notices, affidavit and poll book shall be by said auditor copied into a book for that purpose to be provided, and, when so recorded, such record shall be proof of the facts therein stated.

Trustees to petition court of common pleas.

SEC. 4. When such record has been made, the trustees of such township to which said lands belong shall file a petition in the court of common pleas of the county within which said lands (or the greater portion of them) may be situate, setting forth the giving of said notice, the taking of said ballot, the result of the same, the filing and recording of the aforesaid papers in the office of the auditor of the proper county, and asking the court to appoint three disinterested freeholders, not resident of the township in which the land may be situated, to divide and value the same in money.

Court to appoint appraisers.

SEC. 5. If such court shall be satisfied that the statements made in the petition are true, the court shall appoint three persons to

* As amended March 21, 1861.

divide and appraise the same, according to the prayer of such petition; and said appraisers, after being first duly sworn before some officer authorized to administer oaths, and taking to their aid, if they think necessary, the county surveyor, shall proceed to divide said lands into such parcels or tracts as, in their opinion, will be best for the sale thereof, and return in writing such divisions, suitably numbered and described, to the said court, with a just valuation of each separate division, in money.

Returns, etc., to be recorded.

SEC. 6. The court, on such return being made, and having been by said court examined, and found in all things regular, just and fair, shall certify the same, and order the same to be entered of record, together with the petition, and all the proceedings therein had; a copy of which the trustees shall cause to be filed in the office of the auditor of the proper county, who shall copy the same into a book containing the notice, affidavit, and poll book aforesaid, and immediately following the same.

County auditor to advertise sale.

SEC 7. The auditor of the county, on the recording of said proceedings, shall forthwith cause a notice to be published in some newspaper of general circulation in said county, for six consecutive weeks before the day of sale; and, at the same time, by posting up copies of such notice in six of the most public places in said county, two of which shall be in the township where the lands are situate, and one at the court-house, containing a description of the lots or lands to be sold, the valuation thereof, and the time when said land shall be offered at public auction, by said auditor, at the door of the court-house, at not less than the appraised value thereof; one-twelfth of the purchase-money to be paid at the time of sale, and the balance in eleven annual installments, of equal amount, with annual interest thereon; and said auditor shall, at such time and place, proceed to offer the same to the highest bidder, at or over the appraisement, and on the terms stated in said notice.

Same.

SEC. 8. In case said lands, or any part thereof, shall not be sold as aforesaid, the auditor may continue to offer the same on the application, in writing, of the trustees of the township to which said lands may belong, at any future time or times, until they shall be sold, having first given the like notices herein provided to be given on the first sale thereof: Provided, that no sale shall be had on any valuation made more than two years prior to the day of the sale.

Re-appraisement.

SEC. 9. The court of common pleas aforesaid is hereby required, on the petition of the trustees aforesaid, setting forth the former appraisement and the subsequent proceedings thereto, and that two years have elapsed, and the land remaining unsold, to direct a new valuation of the same to be made in the manner hereinbefore directed, unless said court, on testimony, shall be satisfied that the former appraisement is a just and fair valuation of said lands; in that case, the court shall make an entry of the fact, which entry shall be certified to, and recorded by the auditor, in manner aforesaid, and shall have the same effect as a new appraisement.

In cases of permanent leases, etc.

SEC. 10. In case said lands are held under permanent leases, or leases for ninety-nine years, the legal or equitable holder of any such lease, wishing to surrender the same, and to purchase the fee of the premises so held by lease, may, with the consent of the trustees of the original township to which such lands belong, file his petition in the court of common pleas of the county in which the largest portion

of such lands are situate, setting forth a description of the premises so held, the state of his lease, or his title thereto, that he is desirous of surrendering such lease and becoming the owner of the premises in fee, and asking the court to appoint three disinterested freeholders of the county, and not resident of the township wherein such lands are situate, to value the same; and the court, on being satisfied of the truth of the facts set forth in such petition, shall appoint such appraisers, who shall proceed, under oath, to make a just valuation of the premises in money, without reference to the improvements made thereon, under and by reason of said lease, and shall return such valuation, in writing, to said court; and the said court, if it shall be satisfied that said valuation is just, shall confirm the same, and order it, with the petition and other proceedings therein, to be recorded: Provided, that before the trustees of any original surveyed township shall consent to the surrender of any lease, as provided in this act, they shall cause the proposition to be submitted to the electors of said township, at an election to be held and conducted in conformity to the provisions of the second section of this act; and if, at such election, a majority of the electors shall vote to such surrender, then, and not otherwise, said trustees shall consent to the surrender, in manner and form as herein provided.

Same subject.

SEC. 11. Any such lessee, on producing to the auditor of the proper county, within one year after the making of the same, a certified copy of such petition and appraisement, and confirmation, shall be permitted, by endorsement thereon, attested by the auditor, to release to the state of Ohio all his interest, title, and claim, in and to such lease, for the benefit of the township to which the same may belong; which certified copy of said record and said release, shall be recorded in a book for that purpose to be provided.

Payments to county treasurers, etc.

SEC 12. The purchaser of any such lands, at any auditor's sale, or the lessee of any such land held under such lease, on executing his release, as aforesaid, shall each, forthwith, pay to the treasurer of the county one-twelfth of the purchase money in the first case, and one twelfth of the valuation in the second, and take the treasurer's receipt therefor; and the auditor, on receiving the treasurer's receipt for said first installment, shall give to said purchaser or lessee a certificate, containing the name of the purchaser or lessee, a description of the premises, the number, amount, and time of payment of the subsequent installments, and that said purchaser or lessee, their heirs or assigns, on the punctual payment of the sums still due, with annual interest up to the time of payment, shall be entitled to receive a final certificate from such auditor: provided, that such lessee shall produce to the auditor the certificate of the proper officer, that all rents due on such premises have been paid up to the time of surrendering said lease.

Same subject.

SEC. 13. Any person wishing to pay any money under the provisions of this act, in part or full payment of any such lands, shall first obtain the certificate of the auditor, of the amount due, or to be paid; and on the presentation of the same, the treasurer is authorized to receive the amount therein specified, and shall give to the person paying the same a certificate, directed to the auditor, of the payment of said sum of money; and the auditor, on the presentation of said certificate, shall give to such person a receipt therefor, credit him with the amount in his books, and charge the treasurer therewith.

SEC. 14.* The county auditor shall keep an account with the county treasurer of all sales made and leases surrendered, and moneys paid thereon by each purchaser or lessee, and shall make a report of the same to the auditor of state on the first day of February, May, August and November, in each and every year, which report shall distinguish between the amount paid in as principal, and the amount paid in as interest, and from the time of such report the state shall be liable to pay interest on all such sums of principal so reported as paid, and the treasurer of state, on receiving a certified copy of the account from the auditor of state, shall be authorized immediately to draw said money paid in as principal, from the county treasurer; and the amount so reported as interest shall be retained in the county treasury and apportioned to the several civil townships and parts of civil townships in the original surveyed township, or fractional township to which said land belongs.

County auditor to report sales to auditor of state.

Interest apportioned.

SEC. 15 If any such purchaser or lessee shall fail to make any payment on any tract of land, for the space of twelve months after the time the same shall become due and payable, the auditor of the proper county shall forthwith proceed to sell such tract or tracts of land, with all the improvements thereon, at the door of the courthouse, to the highest and best bidder therefor, in cash, having first given notice of the time and place of such sale, containing a description of the lands, and the money due and to become due thereon, by publishing the same in some newspaper of general circulation in said county, for six consecutive weeks before the day of sale; and on such sale, no bid shall be entertained for a sum which will not be sufficient to pay all the purchase money due the state, and all expenses incident to such sale; and in case the said premises can not be sold for that amount, they shall revert to the state, in trust for said township, and be sold in the manner hereinbefore provided for the sale of such lands not under permanent leases, or leases for nintey-nine years.

In case of failure of purchaser to pay, lands to be resold, for cash.

SEC. 16. When said lands sells as aforesaid, the purchaser shall pay to the treasurer of the county the amount so bid for said premises; and on producing to the auditor the treasurer's receipt for such payment, the auditor shall give him a final certificate, stating the fact of such sale, the name of the purchaser, the description of the lands sold, the amount for which sold, the payment of the same, and that the purchaser is entitled to receive, from the state of Ohio, a deed in fee simple for the same, on producing to the proper officer this certificate.

Purchaser to receive certificate.

SEC. 17. When any purchaser or lessee, their heirs or assignees, shall have made payment in full, the auditor shall give to such person a final certificate, containing, in addition to the former one, the fact of the payment in full, and that said person is entitled to receive, from the state of Ohio, a deed in fee simple for said premises, on the presentation of this certificate to the proper officer or officers.

Final certificate.

SEC. 18. The auditor of state, upon the filing of any such final certificate in his office, shall make out the draft for a deed therefor, and deliver the same, with such final certificate, to the goveror of

Deed from the state.

* As amended April 12, 1858.

the state, who shall sign said deed, and cause the same to be sealed with the great seal of the state, and by him delivered to the grantee, on demand.

Excess of money, how disposed of.

SEC. 19. All excess of moneys made on any sale of delinquent lands as aforesaid, after paying all sums due, interest and costs, shall be paid, on demand, to such delinquent owner, his heirs or assigns, from the county treasury, on the order of the auditor, if such demand be made within one year from the time of such sale; and if not so demanded, it shall be paid into the state treasury; and, unless the same shall be demanded within one year after the same shall have been paid into the state treasury, it shall be applied for the same uses as the lands are subject to.

Fees.

SEC. 20. The fees for services under this act shall be as follows: The court shall tax such fees on any petition filed in the same, as are allowed for similar services on proceedings in chancery. The county auditor to be allowed one dollar and fifty cents on each sale made by him; for each certificate, fifty cents; for each receipt, six cents, to be paid by the purchaser, and the same fees for recording as is allowed to county recorders, to be paid out of the first moneys paid in as interest or rents, on such sale or surrender. All printers' fees for advertising, shall be paid out of the county treasury, on the order of the auditor, and refunded out of the first moneys received on such sale, as interest or rents. The cost in court shall, in case of a petition by the trustees, be paid out of the county treasury, on the order of the county auditor, and refunded out of the first moneys received from the sale, as interest or rents; in case of a lessee being petitioner, all costs shall be paid by him.

Acts repealed.

SEC. 21. The act entitled "an act to provide for the sale of section sixteen, granted by congress for the use of schools," passed January 29, 1827; the act entitled "an act to extend the time of payment to purchasers of school lands in this state," passed January 3, 1843; the act entitled "an act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto," passed February 2, 1843; the act entitled "an act to amend an act entitled an act to extend the time of payment to purchasers of school lands in this state," passed March 6, 1844; the act entitled "an act to amend the act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto, passed February 2, 1843, passed March 12, 1844; the act entitled "an act to fix the minimum price of the sales of school lands," passed March 4, 1845; and the act entitled "an act to amend an act entitled an act to extend the time of payment to purchasers of school lands in this state, and an act amendatory thereto," passed February 1, 1847, be, and the same are hereby repealed: provided, such repeal shall not impair, or in any manner affect any rights or interests acquired under any of said acts.*

JAMES C. JOHNSON,
Speaker of the House of Representatives.
WILLIAM MEDILL,
President of the Senate.

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* An act to provide for the appointment of Register of the Virginia Military School lands, was passed February 22, 1852, 50 v. Stat. 108. As to the sale of Western Reserve school lands, see 46 v. Stat. 38; 47 v. Local Laws, 232; 48 v. Stat. 53.

CHAPTER XVI.

An act to confirm sales made by the trustees of the civil townships of section sixteen, and other lands granted by congress in lieu thereof, to purchasers.

[*Passed April* 5, 1856, *LIII vol. Stat.* 63.]

WHEREAS, in many counties of the state of Ohio, through misapprehension of an act entitled "an act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto," passed February 2, 1843; also of an act entitled "an act to regulate the sale of school lands and the surrender of permanent leases thereto," passed April 16, 1852, the trustees of the civil townships have sold section sixteen to various purchasers, who have purchased said lands in good faith, have paid the purchase money and taken possession of said lands, and in many instances made large improvements on the same; therefore, in order to cure the defects in the titles of such purchasers to such lands, and to quiet them in the possession thereof, Preamble.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That such sales of section sixteen in the original surveyed townships or fractional townships, and all sales of land granted by the congress of the United States in lieu of said section sixteen, which have been made otherwise in conformity with the provisions of the acts recited in the foregoing preamble, be, and the same are hereby confirmed; and such purchasers and their assignees and heirs at law shall hold the purchases so by them made. by a title as good and valid as though the proceedings for such sale had been instituted by the trustees of the original surveyed or fractional townships. Title confirmed.

N. H. VAN VORHES,
Speaker of the House of Representatives.
THOMAS H. FORD,
President of the Senate.

An act to regulate the sale of ministerial and school lands, and the surrender of permanent leases thereto, passed March 9, 1861.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That all those lands, granted by the congress of the United States for religious purposes, known as section twenty-nine, may be sold or the permanent leases thereto surrendered, and that said sale or surrender shall be regulated by, and conducted according to the provisions of an act to regulate the sale of school lands, and the surrender of permanent leases thereto, passed April 16, 1852.

SEC. 2. That section sixteen, donated and set apart for the support of schools, and section twenty-nine for the purpose of religion, or lands granted in lieu of either, by the directors of the Ohio Company, on the 7th day of January, A. D. 1796, in the following original surveyed townships within the Ohio Company's purchase, to wit: township number eight, in range number twelve; township number seven, in range number thirteen; township number eleven, in range number fourteen; township number thirteen, in range number fifteen; and townships number eight, nine, ten, eleven,

twelve and thirteen, in range number sixteen, may be sold, or the leases thereto, whether permanent or otherwise, surrendered, and that said sale or surrender shall be regulated by, and conducted according to, the provisions of the act referred to in the first section of this act, and the lessees of any of said lands holding leases for any term less than ninety-nine years, shall be permitted to surrender their said leases in the same manner, and be entitled to all the benefits of the said act as if their leases were for ninety-nine years.

SEC. 3. This act to be in force from and after its passage.

CHAPTER XVII.

SCHOOL FUNDS.

An act to establish a fund for the support of common schools.

[*Passed March* 2, 1831. *Took effect June* 1, 1831. *XXIX vol. Stat* 423.]

Fund established, etc.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio,* That there is hereby constituted and established a fund, to be designated by the name of "the common school fund," the income of which shall be appropriated to the support of common schools in the state of Ohio, in such manner as shall be pointed out by law; of which fund the auditor of state shall be the superintendent, until otherwise directed by law.

Auditor of state the superintendent.

And how to keep account of funds from sale of school lands.

SEC. 2. That whenever, and so often, as any moneys shall be paid into the state treasury, arising from the sale of any lands which heretofore have been, or hereafter may be, appropriated by congress, for the use or support of schools in any original surveyed township, or other district of country, in this state, the auditor of state shall forthwith open an account, in a book or books to be provided for that purpose, and shall pass the said moneys to the credit of such township, or other district of country; which said money shall constitute an irreducible fund, the proceeds accruing from which shall be paid over and appropriated, in the manner which shall be pointed out by law, for the support of common schools within the township, or other district of country, to and for no other use or purpose whatever.

Irreducible.

Rate of interest and account thereof.

SEC. 3. That all moneys paid into the state treasury as aforesaid, shall bear an annual interest of six per centum; which interest shall be cast from the time of the payment of any principal sum, up to the first day of January, next succeeding such payment, and on the first day of January, annually, thereafter; and where the same has not been done, the auditor of state shall, in a book or books to be provided for that purpose, open an interest account with every township, or other district of country, to which a credit in the irreducible fund aforesaid shall have been passed; and he shall, in such book or books, keep accurate accounts of the accrual and disbursement of all interest accruing from such fund, so as aforesaid belonging to any township or district of country; and the faith of the state of Ohio is hereby pledged for the annual payment of the interest aforesaid, to the person who, and in the manner which, shall be pointed out by law; which said interest shall be appropria-

Pledge for its payment.

ted and expended for the support and maintenance of common schools within the township, or other district of country, entitled as aforesaid to the same. Its appropriation.

SEC. 4. That for the payment of any interest that shall have accrued, and be payable to and for any township, or other district of country as aforesaid, the county auditor of the proper county shall, annually, on or after the first day of January, draw an order on the treasurer of state, in favor of the treasurer of the proper county, for the interest which shall be payable in such county; and upon such order being presented to the auditor of state, he shall thereupon certify an abstract of the amount of interest payable to each township, or other district of country, in such county; and thereupon, on presentation of said order, the treasurer of state shall pay the amount of interest appearing by said abstract to be due; and the said county treasurer, or the person presenting said order for him, shall indorse on said order a receipt for so much as shall be paid thereon, and shall also sign a duplicate receipt, which shall be lodged with the auditor of state, who shall credit the state treasurer therewith, and charge the several items constituting the aggregate of such abstract, to the proper township or other district of country; and the money so drawn, shall be paid out by the county treasurer, on the order of the county auditor, in the proportions established by law, to the proper person or persons in each school district authorized to receive the same. And in all cases in which a county line shall divide any original surveyed township, or fractional part thereof, the interest, payable in such township, shall be received and disbursed in manner aforesaid, by the treasurer of the county wherein the greatest quantity of land belonging to such township shall be situate; but if it be uncertain in which county the greatest quantity of land in such township be situate, then the said interest shall be received and disbursed by the treasurer of the oldest county in which any part of such township shall be situate.

Order therefor and payment. Receipt, etc. Distribution.

SEC. 5. That whenever any donation or devise shall be made, by gift, grant, last will and testament, or in any other manner whatever, of any estate, either real, personal, or mixed, to the state of Ohio, or to any person, or otherwise, in trust for the said common school fund, by any individual, body politic or corporate, the same shall be vested in said common school fund; and whenever the moneys arising from such gift, grant, or devise, shall be paid into the state treasury, the proper accounts thereof shall be kept, and the interest accruing therefrom shall be appropriated according to the intent and design of such donor, grantor, or devisor.

Donations and bequests to vest in common school funds, etc.

SEC. 6. That there shall be constituted a fund for the support of common schools, which shall belong, in common, to the people of this state; which shall consist of the net amount of the money which heretofore has been, or hereafter may be, paid into the state treasury, from the sales of the lands commonly called the salt lands, and such donations, legacies and devises, as may be made to such fund, or to any person or persons, in trust for the same. And the state of Ohio is hereby pledged to pay the interest, annually, on any and all sums of money which shall have been, or may hereafter be, paid into such treasury, from the passage of this act, or the receipt of such money into the treasury aforesaid; and the interest arising as aforesaid, shall be funded annually, until the first day of January, in the year eighteen hundred and thirty-five; after which time the

General fund established. Of what to consist. State pledged for the interest. Interest funded until 1835.

said interest shall be annually distributed to the several counties in this state, in proportion to the number of white male inhabitants above the age of twenty-one years, as by law shall be ascertained, for the apportionment of representatives; and the proportion of interest, due to each and every such county, shall be distributed for the support of common schools, in the respective counties, in the manner prescribed in the act to provide for the support and better regulation of common schools.

How distributed afterward

[The balance of the chapter is probably superseded by the act organizing the sinking fund. The provisions are retained in Swan's Revised Statutes.

It is also questionable whether the state common school fund, organized in section 6, is in existence. If so, the act of March 6, 1844, adds to it "all moneys arising from licenses to peddlers, all moneys arising from auction duties, or licenses to auctioneers, except in the county of Hamilton; and all fines and penalties collected under the laws relating to each of said funds;" but the same act limits the fund, however derived, to $200,000.

The doubt grows out of the language of section 63 of the general school act (chapter I, *ante*), namely: "The state common school fund *shall hereafter consist* of such sum as will be produced by the annual levy and assessment of one mill and one-half mill on the grand list of taxable property," etc. The late revisors, Swan and Curwen, regard those provisions as yet in force, and the repeal is exclusively by implication. The following act stands on the same footing:*]

CHAPTER XVIII.

An act to increase the general fund for the support of common schools, established by the sixth section of the act to establish a fund for the support of common schools, passed March 2, 1851, by the appropriation of the proceeds of the swamp lands to that fund.

[*Passed March* 24, 1849, *XLIX vol. Stat.* 40.]

Proceeds of sales of swamp lands to be added to the common school fund.

SECTION 1. *Be it enacted by the General Assembly of the State of Ohio*, That the net proceeds which may hereafter be paid into the state treasury, from the sales of swamp lands granted to the state of Ohio, by act of congress, passed September 28th, 1850, be and the same is hereby appropriated to the general fund for the support of common schools; and the state of Ohio is hereby pledged to pay the interest, annually, on any and all sums of money which may be paid into the state treasury, from the sales of said lands, from the receipt of such money into the treasury aforesaid; and the interest arising as aforesaid, shall be funded annually, until the first day of January, in the year eighteen hundred and fifty-five; after which time the said interest shall be annually distributed to the several counties in this state, in proportion to the number of white male inhabitants above the age of twenty-one, as by law shall be ascertained, for the apportionment of representatives; and the proportion of interest due to each and every such county, shall be distributed for the support of common schools in the respective counties, in the

*See Swan's Revised Statutes, 853–4.

manner prescribed in the "act to provide for the support and better regulation of common schools."

JOHN F. MORSE,
Speaker of the House of Representatives.
CHARLES C CONVERS,
Speaker of the Senate.

CHAPTER XIX.

THE IRREDUCIBLE OR SPECIAL SCHOOL FUNDS.

These now constitute a capital of $2,044 056,* the proceeds of specific appropriations of lands by congress for school purposes, upon which the state treasury pays an annual interest of six per cent. This income is not distributed by a uniform rule, however. Those territorial divisions of the state, known as the Virginia Military District, United States Military District, and Connecticut Western Reserve, are each entitled to receive the income of the school fund so designated, in proportion to the whole number of youth therein, while in the remainder of the state, the rent of section sixteen, or the interest arising from the proceeds of its sale, is paid exclusively to the inhabitants of the original surveyed townships. The whole number of youth of school age in the Virginia Military District, for instance, constitutes the divisor of the entire income, thus affording an obvious method of distribution to the counties; while a similar calculation must attend the apportionment to the respective townships of the proceeds of section sixteen. Besides the inconvenience from this state of things, there is produced a great inequality of benefit. One township may receive a large sum—their section of land having been fortunately located or judiciously sold—while an adjacent township receives a mere pittance. Still, it is doubtful whether there is any remedy for this inequality. In Indiana, an attempt was recently made to consolidate these township funds, distributing their income equally throughout the state; but the supreme court of the state decided that such a measure was a violation of the trust created by the tenure of these lands from congress, or (to reverse the injunction of the Ohio constitution) that "the income arising therefrom" was *not* "faithfully applied to the specific objects of the original grants or appropriations."

The ground upon which the diversity in the application of these funds rests, will more fully appear by a brief synopsis of the original grants or appropriations; for, at the first glance, it excites surprise that such an inconguity should be suffered to continue in the condition of our school funds.

The ordinance of the continental congress which first provided for the disposition of lands northwest of the river Ohio, was passed May 20th, 1785, and resulted in the survey of the seven ranges, which are bounded on the north by a line drawn due west from the Pennsylvania state line, where it crosses the Ohio river, for the distance of forty-two miles; thence south to the Ohio river at the southeast corner of Marietta township, and thence up the river to the place of beginning. This tract comprises all of Jefferson, Harrison, Belmont and Monroe counties, most of Carroll, and small portions of Columbiana, Tuscarawas, Guernsey, Noble and Washington, along their easternboundaries. The ordinance of 1785, among other reservations, withheld from sale "Lot No. 16, of every township, *for the maintenance of public schools within the said township.*"

The contracts first executed with the Ohio Company included the entire territory between the west line of the seven ranges, the Ohio and Scioto rivers, and the northern boundary of the tenth township from the Ohio river extended westwardly to the Scioto. The last mentioned boundary would now be a line passing through

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*1854.

the centre of Coshocton county, and including the southern tiers of townships in Tuscarawas and Knox counties. The government stipulated, and the company agreed, that "the Lot No. 16, in each township, *be given perpetually for the purposes contained in the said ordinance of the 20th of May*, 1785." The purchase of the Ohio Company was finally restricted to a tract bounded on the south by the Ohio, east by the seventh range of townships, by the western line of the fifteenth range of townships on the west, and a line on the north so drawn as to make seven hundred and fifty thousand acres, exclusive of reservations. The company finally became possessed of 964,285 acres, lying along the Ohio river, and now including Meigs and Athens, most of Washington and Gallia, and adjacent fractions of Morgan, Hocking, Vinton and Lawrence counties.

The reservation in the Symmes' Purchase was likewise expressed, "of Lot No. 16, for the purpose mentioned in the land ordinance of the 20th of May, 1785." Symmes' contract was originally for a million of acres between the Great and Little Miami, but the tract finally conveyed in 1794 was bounded on the north by a line connecting those streams, a little above Lebanon, in Warren county, and contained 311,682 acres.

In 1802, congress passed an act authorizing the organization of the State of Ohio, and, among other inducements for a provision exempting lands sold by the United States from taxation for a period of five years, proposed "that the section No. 16, in every township, and where such sections had been sold, granted, or disposed of, other lands equivalent thereto, and most contiguous to the same, shall be granted to such township for the use of schools."

So far, certainly, the language of grants seems to imply separate township funds, but the next stage of the question recognizes a different kind of dedication. The Ohio convention accepted the proposition of congress, but with an important condition, as follows: "Provided, the following addition to, and modification of the said propositions, shall be agreed to by the congress of the United States, viz: that in addition to the first proposition securing the said section, number sixteen, in every township within certain tracts, to the inhabitants thereof, for the use of schools, a like donation, equal to the one thirty-sixth part of the amount of the lands in the United States Military Tract, shall be made for the support of schools within that tract; and that the like provision shall be made for the support of schools in the Virginia Reservation, so far as the unlocated lands in that tract will supply the provision aforesaid, after the warrants issued from said state have been satisfied; and also that a donation of the same kind, or such provision as congress shall deem expedient, shall be made to the inhabitants of the Connecticut Reserve; that of all the lands which may hereafter be purchased of the Indian tribes by the United States, and lying within the State of Ohio, the one thirty-sixth part shall be given, as aforesaid, for the support of public schools; that all lands before mentioned to be appropriated by the United States for the support of schools, shall be vested in the legislature of said state, in trust, for said purpose."

Congress, by act of March 3, 1803, assented, enacting (section one) that the tracts therein described were "appropriated for the use of schools in the state, and shall, together with all the tracts of land heretofore appropriated for that purpose, be vested in the legislature of the state, in trust, for the use aforesaid, and for no other use, intent, or purpose whatever." The same section proceeds to grant eighteen quarter townships, or one thirty-sixth of the lands in the United States Military District, "for the use of schools within the same;" secondly, fourteen quarter townships, also situated in the United States Military District, "for the use of schools in that tract commonly called the Connecticut Reserve;" thirdly, so much of the Virginia Military Reservation, to be selected by the Ohio legislature from unlocated lands therein, as would amount to one thirty-sixth of the whole tract; and fourthly, (which is the last clause of the first section,) "one thirty-sixth part of all the lands of the United States lying in the state of Ohio, to which the

Indian title is not extinguished, which may hereafter be purchased of the Indian tribes by the United States, which thirty-sixth part shall consist of section sixteen in each township, if the said land shall be surveyed in townships of six miles square, and shall, if the lands be surveyed in a different manner, be designated by lots." The second section declared "that the several appropriations for schools made by the preceding section" were "in conformity to, and in consideration of, the conditions agreed on by the state of Ohio, by the ordinance of the convention of the said state, bearing date the 29th day of November, 1802."

Whatever may be the construction of the ordinance of 1785, of the subsequent contracts with the Ohio Company and John Cleves Symmes, and of the seventh section of the act of congress of April 30, 1802, there seems to have been no question as to the meaning of the Ohio convention and of congress, in regard to the school lands appropriated for the United States Military District, the Virginia Military District, and the Connecticut Western Reserve. But if the proceeds of these grants can be properly treated as a single fund, the income of which may be distributed equally to the youth of school age in the respective districts, why may not the grant of one thirty-sixth of the lands to which the Indian title was unextinguished in 1802, be disposed of in the same manner? That portion of the state which might be denominated the Greenville Treaty District, from the well-known boundary which then separated the Indian Territory from the lands ceded in 1795 to the United States, can readily be identified on any map of the state, and is recognized by the fourth clause of the first section of the act of congress, passed in compliance with the resolution of the Ohio Constitutional Convention, to be as distinctly a separate district, for the purpose of a grant of school lands, as the Virginia Military or other special districts. If the funds arising from the donations to the latter can be legally consolidated, and their incomes distributed *per capita*, no good reason appears why all the counties between the United States Military District and the Western Reserve, and northwest of the old Greenville line—including Wayne, part of Holmes, Ashland, Richland, part of Morrow, Marion, Hardin, Union, Logan, Shelby, Mercer, Crawford, Seneca, Sandusky, Ottawa, (except one township in Western Reserve,) Lucas, Wood, Hancock, Auglaize, (except part of one township in Virginia Military District,) Allen, Putnam, Henry, Fulton, Williams, Defiance, Paulding and Van Wert counties—should not be placed on an equal footing as to the enjoyment of a school fund arising from the sale or lease of section sixteen; although, if the rest of the state, whose donations are of an older date, are permitted to receive these proceeds by the rule of township distribution, it may be inexpedient to make any change in the existing system. These particulars are not offered as the foundation of any recommendation to that effect. The subject is too much environed by difficulties, and these have been too fully considered by the general assembly, to warrant any change, unless upon greater consideration than the undersigned has been able to give to the subject.

By act of March 2, 1807, congress appropriated eighteen quarter townships and three sections, to be selected by lot from lands lying between the United States Military Tract and the Western Reserve, for the use of schools in the Virginia Military Reservation—thus removing a restriction contained in the act of 1803, which confined their selection to the Virginia Military District. In return the state of Ohio released to the United States the thirty-sixth part of the tract first designated, accepting the above grant in lieu thereof It may be well to add that the Virginia Military District, (or the tract between the Scioto and Little Miami, reserved by Virginia from her cession of the territory north-west of the Ohio river for the satisfaction of land bounties issued to her troops upon continental establishment,) may be traced upon a township map of Ohio as follows: It includes the whole of Adams, Brown, Clermont, Clinton, Fayette, Highland, Madison and Union counties; half of Hardin, or Taylorsville, Hale and Dudley townships, and

a large portion of Roundhead; part of a single township (Goshen) in Auglaize; one half of Logan, or Rush Creek, Bokengehelas Creek, Jefferson, Perry, Zane, and Goshen townships, with large fractions of McArthur, Monroe, and Lake, and a smaller portion of Stokes; one quarter of Champaign, or Wayne, Rush and Goshen townships, with a large part of Union, and a less fraction of Salem; the north-east and south-east extremities of Clark, being the eastern portions of Pleasant and Harmony and the southern portions of Madison and Greene townships; three-fourths of Greene, or all of the county except Bath and Beaver's Creek townships, and those portions of Miami, Xenia and Miami which lie west of the Little Miami river; two-fifths of Warren, or Hamilton, Salem, Washington, and part of Wayne townships; a single township (Anderson) at the south-east angle of Hamilton; two fifths of Scioto, viz: Nile, Washington, Union, Brush Creek and Morgan townships; three-fifths of Pike, viz: Camp Creek, Sunfish, Mifflin. Perry, Pebble, Benton, Peepee, and the west half of Jackson townships; two-thirds of Ross, viz: Franklin, Huntington, Paxton, Scioto, Twin, Paint, Buckskin, Concord, Union and Deerfield townships; two-thirds of Pickaway, viz: Wayne, Deer Creek, Perry. Jackson, Monroe, Muhlenberg, Darby and Scioto; seven of the nineteen townships of Franklin, viz: Jackson, Pleasant, Prairie, Franklin, Norwich, Brown, and Washington; a narrow belt along the west line of Delaware, to wit: the townships of Thompson and Scioto, and a fraction of Concord; and finally, the two south-western townships of Marion, viz: Green Camp and Bowling Green—to the place of beginning "in a large wet prairie, or swamp," whence flow, in opposite directions, the Scioto and Great Miami towards the Gulf of Mexico, and the Auglaize northwardly to its junction with the Maumee or Miami of Lake Erie. The sale of the school lands allotted to the inhabitants of the Virginia Military District occurred in pursuance of acts passed by the General Assembly in 1827 and 1828.

The United States Military District, so frequently mentioned in the present connection, was appropriated by an act of Congress, in 1796, to satisfy the land bounties granted by the Continental Congress to the officers and soldiers of the revolution. It was bounded as follows: "Beginning at the northwest corner of the original seven ranges of townships, and running thence fifty miles due south along the western boundaries of the said range; thence due west with (to?) the main branch of the Scioto river; thence up the main branch of the said river to the place where the Indian boundary line crosses the same; thence along the said boundary line to the Tuscarawas branch of the Muskingum river, at the crossing place above Fort Laurens; thence up said river to a point where a line run due west from the place of beginning will intersect the said river; thence along the said line to the beginning." The language here quoted is from the act of June 1, 1796, and is geographically inaccurate, for when the old Greenville line (the Indian boundary mentioned) reaches the site of Fort Laurens (near the village of Calcutta, on the southern border of Stark, and of Bolivar, in Tuscarawas counties) there is no need of ascending the Muskingum to reach a point due west from the place of beginning. A few miles from the site of Fort Laurens, directly east connects with the northeast corner of the seventh range of townships. The act further directed this tract to be surveyed into townships of five miles square; and these were afterwards surveyed into quarter townships of two and a half miles square, containing 4,000 acres each. Consequently the grant to the United States Military District of eighteen of these quarter townships, contained in the act of 1803, amounted to 72,000 acres, or about one thirty-fourth of the whole extent of the district. The appropriation to the Connecticut Reserve, by the same act, of fourteen quarter townships, or 56,000 acres, was, of course, inadequate; while the subsequent allotment of eighteen quarter townships and three sections within this tract for the benefit of the Virginia Military District may have amounted, together with other locations made between the Scioto and the Little Miami, from 1803 to 1807, to the proportion of one thirty-sixth of the lands in the latter tract.

The school lands originally granted to the United States Military District remained under lease until 1827–8, when the inhabitants were authorized to vote their consent to sell them, which was done, and their proceeds now constitute a portion of the irreducible fund. The district entitled to a uniform division of their yearly income may thus be designated on the map of Ohio: The whole of Coshocton county, and the following fractions, greater or less, of the adjacent counties: of Tuscarawas, all except most of Warren and Union, and smaller portions of Will and Rush townships; of Guernsey, all except Londonderry and Oxford on the eastern, and Spencer on the southern border; of Noble, only sections 19, 20, 21 and 22, in township one, range one west of the seven ranges; of Muskingum, whatever lies north of the latitude of Zanesville, viz., Union, Perry, Washington, Falls, Hopewell, Highland, Salem, Muskingum, Licking, Monroe, Adams, Madison, Jefferson and Jackson; of Holmes, all but Washington and Ripley, and portions of Prairie, Salt Creek, Paint, Knox and Monroe; of Licking, all but Etna and Bowling Green, and parts of Union and Licking, which constitute its southern border; of Knox, all but a narrow wedge extending from west to east along the northern line of Middleberry and Berlin; about half of Morrow, viz., Chester, Bloomfield, Harmony, Bennington, Penn, Lincoln, Westfield and part of Franklin townships; most of Delaware, all except the narrow belt west of the Scioto; and of Franklin, the northeastern townships of Jefferson, Mifflin, Clinton, Plain, Blendon, Sharon and Perry.

The donation of 56,000 acres for the use of schools on the Western Reserve was probably one thirty-sixth of the land east of the Cuyahoga river; but when, in 1805, the Indian title was extinguished, by the treaty of "Fort Industry, on the Miami of the Lake," east of the meridian line drawn from Lake Erie along the western limit of the Connecticut Reserve, and thence south to the Greenville line, it became the duty of Congress to furnish a due proportion of School Land for the remainder of the Reserve, which was estimated, by a memorial of the Ohio Legislature, dated January 21, 1827, to be 43,000 acres. It was not, however, until June 19, 1834, that an act of Congress was passed, directing the President of the United States to reserve from sale public lands in Ohio sufficient, in addition to the grant of 1803, to constitute one thirty-sixth of the area of the Western Reserve for the use of schools. Under this act it was ascertained that the State of Ohio became entitled to 37,758 acres, most of which was located in the counties of Defiance, Henry, Williams, Paulding, Van Wert and Putnam; in 1848 the people of the Western Reserve, by a vote authorized by the General Assembly, decided in favor of their sale; in 1850 provision was made for their appraisement and sale, and the lands in question are now generally disposed of. An income of six per cent. upon their net proceeds is paid to the counties of Ashtabula, Trumbull, Lake, Geauga, Portage, Cuyahoga, Medina, Lorain, Huron and Erie; to ten townships of Mahoning, viz., Berlin, Ellsworth, Canfield, Boardman, Poland, Milton, Jackson, Austintown, Youngstown and Coitsville; to all of Summit, except Franklin and Greene townships; to three townships of Ashland, viz., Ruggles, Troy and Sullivan; and the eastern extremity of Ottawa, consisting of Danbury township, and a portion of the Bass Islands in Lake Erie.

The Moravian School Fund is usually mentioned in financial and school reports. Congress, at an early day, granted three tracts, of four thousand acres each, to the society of United Brethren, for propagating the gospel among the heathen, in trust for the Christian Indians of the Muskingum. These tracts included the missionary stations of Schœnbrum, Gnadenhutten and Salem, in Tuscarawas county, and were reconveyed in 1824 to the United States, in consideration of certain provisions for the benefit of the society, and the remnant of Indians then surviving. By an act of Congress, passed the same year, the Secretary of the Treasury was allowed to set apart, from the sale of these lands, one lot, not exceeding one thirty-sixth part of each tract, the title being vested in the Legisla-

ture of Ohio, in trust for the use of schools, in the same manner that other lands have been granted for that purpose.

By a communication from the Auditor of State it appears that the total amount of payments into the State Treasury, on the 15th November, 1854, constituting the school trust fund, or the bulk of the "irreducible debt of Ohio," was as follows:

Virginia Military School Fund	$150,150 85 7
U States " " "	120,272 12 0
Western Reserve " "	242,818 00 3
Section Sixteen " "	1,527,940 98 1
Moravian " "	2,873 97 0
	$2,044,055 93 1

As before stated, the State receives these funds as a perpetual loan, and pays an annual interest of six per cent. thereon, for distribution in the localities entitled to the proceeds.

A SYNOPSIS OF OTHER SCHOOL REVENUES—FINES, SWAMP LANDS, ETC.

A brief synopsis of legislative provisions, with the dates of their passage annexed, will indicate those pecuniary penalties which, by the neglect of school officers, are frequently diverted from the use of schools, and which, if an account were rendered in the different counties and townships of the State, might afford a considerable fund of arrearages.

The following is a list of the fines which the different acts whose dates are given direct to be paid into the county treasuries, for the use of schools:

1. One dollar for the importation or sale of salt, without legal inspection, at Cincinnati, Portsmouth, or Cleveland—February 3, 1840. 2. Not exceeding five hundred dollars for procuring abortion—February 27, 1834. 3. One hundred dollars by county treasurer for failing to make annual settlement with State treasurer—January 3, 1843. 4. Not exceeding one hundred dollars for wantonly or maliciously opening inclosures—February 28, 1846. 5. Five dollars for every hundred pounds of fish, except shad, mackerel or herring, sold without inspection —March 9, 1831. 6. Five to fifty dollars for failing to bury or burn the offal of fish, taken in the waters of this State, to the amount of one or more barrels—March 9, 1831. 7. Five hundred dollars for keeping gambling instruments, aiding in gambling, or becoming a common gambler—January 17, 1846. 8. Not exceeding fifty dollars by county inspectors for receiving more than their prescribed fees or buying condemned articles—March 9, 1821. 9. Not exceeding ten dollars for obstructing the navigation of the Muskingum river—March 1, 1834. 10. Not exceeding ten thousand dollars by any officer or corporation who is in contempt for disregarding orders of court in *quo warranto* procedure—March 17, 1838. 11. Fifty cents by manufacturers of salt for each barrel not drained and packed according to law—April 30, 1852 12. One-half of amount received by county auditors (the other half applied to agricultural fund by act of February 8, 1847) for licenses of "any traveling show"—(further defined as "any natural or artificial curiosity, or exhibition of horsemanship in a circus or otherwise, for any price, gain or reward")—at not less than twenty nor more than fifty dollars; also, one-half of fines of one hundred dollars for exhibiting without such license—auditor to apportion the above proceeds to the respective school districts (now the townships and special districts) according to the number of youth therein—February 28, 1831, amended by act of February 8, 1847. 13. The amount of any debt or demand upon which any bank shall have taken illegal interest, less the per centage of the prosecuting attorney, provided the debtor has not commenced proceedings within six months from the transaction—March 19, 1850.

The fines payable to township treasurers for the use of schools are as follows:

1. Five to fifty dollars for unauthorized traffic near camp meetings—March

26, 1841. 2. Ten dollars for allowing Canada thistles to mature on defendant's land, and twenty dollars for knowingly vending any grass or other seed in which there is any seed of the Canada thistle—March 6, 1844. 3 Divers penalties under the act to restrain immoral practices, passed February 17, 1834, viz: One to five dollars for Sabbath breaking; five dollars for selling spirituous liquors on Sunday; not exceeding twenty dollars for disturbing religious meetings; twenty-five cents to one dollar for each offense, "if any person of the age of fourteen years or upward shall profanely curse or damn, or profanely swear by the name of God, Jesus Christ, or the Holy Ghost;" fifty cents to five dollars for exciting disturbance at a public meeting; fifty cents to five dollars for playing bullets, running horses, or shooting at a target in towns or villages; ten to one hundred dollars by any keeper of a public house or retailer of spirituous liquors who is connected with a nine pin alley; ten dollars "if any person or persons shall exhibit any puppet-show, wire dancing or tumbling, jugglery or sleight of hand within this state, and shall ask and receive any money or other property for exhibiting the same;" ten dollars for defacing any advertisement set up by authority of law; not exceeding one hundred dollars for bull or bear baiting and other torture of animals; not exceeding twenty dollars for any agency in "the game commonly called cock fighting; one to five dollars "if two or more persons shall run a match horse race or races in any public road in common use, for the purpose of trying the speed of their horses;" and if any justice of the peace fai. to pay over the above fines for immcral practices, he shall forfeit double amounts. 4. Five to fifty dollars for firing cannon or exploding more than five ounces avoirdupois of gunpowder on public streets or highways, except in certain cases —February 10. 1845. 5. One dollar for each muskrat killed between May 1 and October 15, "provided that nothing in this act contained shall be construed to prevent any person from destroying muskrats where the same shall be injurious to works of a public or private nature"—"An act to protect the fur trade," passed January 18, 1830. 6. Fifty dollars for unlicensed peddling—February 7, 1848. 7. Five to fifty dollars by manufacturers who compel any women or children under eighteen years of age, or permit any child under fourteen years, to labor more than ten hours in any one day—March 19, 1852. 8. Twenty-five cents to one dollar by owner of "habitually breachy or unruly animals," after due notice by township trustees, payable to "the treasury of the school district in which d·fendant resides" (now the township treasury)—January 17, 1840. 9. Five to twenty-five dollars by any tavern keeper, grocery keeper, or other person, for harboring any intoxicated Indian or Indians, "for the use of the school district" —March 20, 1840.

By act of March 14, 1853, personal property escheated to the state is appropriated to common schools.

In respect to the swamp lands granted by the general government to the western states, by the act of September 28, 1850, the allotment to Ohio was only $25,720\frac{7}{160}$ acres, while Indiana receives $1,286,827\frac{44}{160}$ acres. This contrast proves the extent to which Ohio lands are susceptible of cultivation, or that the designation of "swamp lands" has not been applied with much precision, or governed by an uniform rule.

The legislation by the state of Ohio assumes that these lands are in a condition unsuitable for tillage and deleterious to health, and the acts of March 2, 1853, and April 25, 1854, offer inducements for promptly reclaiming them. The auditors of the counties in which they are situated, are required to advertise for proposals to drain and reclaim such lands, and award the contract of drainage and reclamation to the lowest responsible bidder. A previous section provides for the appraisement of the lands *before they have been drained and reclaimed*, and the only means set apart by the act to pay for such drainage consists of "said lands lying in said county at the appraised value thereof." The first eight sections of

the act of 1853 contemplate that, after the lands are reclaimed, they may be taken at the appraised value before reclamation to the amount of the contractor's bid; and then section 9 adds "that if after the said swamp or overflowed lands of this state, lying within any county, be drained or reclaimed as herein provided, there shall remain any of the said lands undisposed of, it shall be the duty of the county commissioners of such county to appraise the same, and make returns of such appraisal as aforesaid; upon the filing of such returns in his office, the said county auditor is hereby authorized to sell the said lands at the appraised value thereof to any applicant therefor, who will make an oath or affirmation that it is his intention to improve the same and make the same a permanent residence, or that the same adjoin to and are necessary to the proper improvement of lands then owned and improved by such applicant, which said oath or affirmation the said county auditor is hereby authorized to administer; and in all cases of sales, as prescribed in this section, the said county auditor shall receipt to the purchaser for the amount of money received, and describe therein the lands sold, which said receipt, upon presentation and delivery to the governor, shall entitle the purchaser to a patent for such land; provided that such of said swamp or overflowed lands as are incapable of being drained or reclaimed, may be sold without the oath or affirmation hereinbefore required.

Two years is the period fixed for the performance of these contracts of drainage, and when companies have been formed for the purpose, the work done by them may be estimated in money, and lands conveyed at the appraised value. Section 10 finally provides "that all moneys received by said county auditor upon all sales as aforesaid, shall be paid into the county treasury of the county in which the lands sold are situated, to reimburse the county for the expenditures of draining and reclaiming said swamp or overflowed lands, *and the residue, if any there be, shall be paid by said county treasurers into the state treasury for the use of schools.*" Under these circumstances, it would be unreasonable to expect any material addition to the resources of schools from a reversionary interest so contingent.

FORMS.

MINUTES OF SUB-DISTRICT ELECTION.

SUB-DISTRICT, No. —,
——— Township, ——— County, Ohio.
——— —, 186—.

At a meeting of the qualified voters of said sub-district, ——— ——— was appointed chairman, and ——— ——— secretary.

Whereupon, said voters proceeded to elect by ballot, one director for said sub-district, for the term of three years, and upon inspection of the several ballots given at said election, it was found and publicly declared, that ——— ——— was duly elected.

——— ——— Secretary. ——— ——— Chairman.

NOTICE OF SUB-DISTRICT MEETING.

* Notice is hereby given to the qualified voters of sub district number —, ——— township, ——— county, Ohio, that the next annual election for director in said sub-district, will be held at the school-house in said sub-district, at —— o'clock P. M., of the —— day of ———, 186—.

By order of the Directors,
——— ——— Clerk.

OATH OF DIRECTOR.

On the — day of ———, 186—, personally appeared ——— ———, and I then and there administered to him the following oath (*or affirmation*):

You, ——— ———, do solemnly swear (*or affirm*) that you will support the constitution of the United States, and the constitution of the state of Ohio, and that you will faithfully and impartially discharge the duties of director, in and for said sub-district, number ——, ——— township, ——— county, Ohio, according to law, and the best of your abilities.

——— ———,
Director in said sub-district.

APPOINTMENT OF DIRECTOR BY TOWNSHIP CLERK.

———, ——, 18—.

WHEREAS, ——— ———, one of the directors in sub-district number ——, ———

* This notice may be varied to serve for a special meeting under sec. 4, by omitting the conclusion.

township, ——— county, Ohio, has resigned, (*died, or refused to serve, &c., as the case may be*)
Therefore, I do appoint —— ——— director in said sub-district, who shall hold his office until the time of the next annual meeting.

—— ———,
Township Clerk of said Township.

SUB-DISTRICT MEETING—APPOINTMENT OF CLERK, &c.

———, ——, 18—.

The directors of sub-district number ——, ——— township, ——— county, Ohio, this day met, and were legally qualified as directors.
Whereupon, —— ——— was appointed clerk of said district.
On motion, it was *Resolved*, &c. —— ———, *Clerk.*

FORM OF AGREEMENT BETWEEN DIRECTOR AND TEACHER.

This memorandum of agreement, made the —— day of ———, eighteen hundred and sixty ——, between —— ———, a school teacher, of the one part, and —— ———, —— ——— and —— ———, as directors of sub-district number ——, ——— township, ——— county, Ohio, of the other part:
WITNESSETH, That said —— ——— agrees to teach the public school of said sub-district for the term of ———, commencing on the —— day of ———, eighteen hundred and sixty ——, for the sum of ——— per ———, and that for said services properly rendered, said —— ——— and —— ———, as directors as aforesaid, are then and there to certify in favor of said —— ——— for the amount of wages due him, as ascertained by this article of agreement.
Witness our hands.

—— ———,
—— ———, } *Local Directors.*
—— ———,

TEACHER'S CERTIFICATE FOR PAY.

———, ——, 18—.

To the Clerk of ——— Township, ——— County, Ohio:

This is to certify, that —— ———, under a contract duly made and entered into, taught a common school in sub-district number ——, of said township, from the —— day of ———, 186—, to the —— day of ———, 186—, in all ——— days, at ——— per month; and that there is due him for said service, the sum of ———.

—— ———,
—— ———, } *Local Directors.*
—— ———,

ORDER ON TOWNSHIP TREASURER FOR TEACHER'S PAY.

———, ——, 18—.

No. —.

To the Treasurer of ——— *Township,* ——— *County, Ohio:*

Pay —— ——— ——— dollars for services as teacher in sub-district number ——, of said township, from ———, 186—, to ———, 186—, in all ——— days, at ——— per month.

—— ———, *Township Clerk.*

$——.

DISMISSAL OF TEACHER.

WHEREAS, it has been represented to us that —— ———, who has been employed, and is now engag-d in teaching a school in sub-district number —, —— township, —— county, is negligent (*or here insert any other sufficient cause*), as such teacher. And, whereas, we have become satisfied of the truth of said representation: or,

WHEREAS, we have been required by the board of examiners of ——— county, to dismiss —— ———, now engaged as a teacher in sub-district number ——, ——— township, and county aforesaid, for the following causes:

(*Here set forth the causes.*)

Therefore, said —— ——— is hereby dismissed as teacher as aforesaid. Witness our hands, ——— ——, 186—.

—— ———,
—— ———, } *Local Directors.*
—— ———,

VISIT TO SCHOOL.

This day the undersigned, local directors in sub-district number ——, ——— township, ——— county, Ohio, in company with —— ——— and —— ———, who were invited for the purpose, visited the school in said sub-district, taught by —— ———, and the following was the result of the examination and visit:

They found, &c. (*Here set forth the opinion as to the management of the schools, &c.*)

—— ———,
—— ———, } *Local Directors.*
—— ———,

CONTRACTS.

This memorandum of an agreement made this — day of ——, eighteen hundred and sixty ——, between —— ——, of the one part, and —— ——, —— —— and —— ——, as directors of sub-district number —, —— township, —— county, Ohio, witnesseth: That said —— —— agrees to deliver at the school-house in said sub-district, on or before the — day of —— next, —— bushels of coal of a good quality, at —— cents per bushel. And said ———, ——— and

———, as trustees as aforesaid, are then and there to certify in favor of said ——— ———, for the sum due for said fuel.
Witness our hands, &c., ———, ———.

——— ———, }
——— ———, } *Local Directors.*
——— ———, }

NOTE.—If not too lengthy, copies should be furnished to the Board of Education, as all contracts must be reported.

ENUMERATION 1.

Enumeration of youth between the ages of five and twenty-one years, residing in sub-district number ——— ——— township, ———, the ———, 186—.

Names of Parents or Guardians.	Names of Children.	Males.	Females.	Total Number.	No of Sec. in which youth reside.
	White Youth.				
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
	Colored Youth.				
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....

We hereby certify the above to be a correct list of the white and colored youth in sub district number ———, ——— township, ——— county, for the year 186—.

——— ———, }
——— ———, } *Local Directors.*
——— ———, }

———, ———, 186—.

ENUMERATION 2.

Enumeration of youth between the ages of five and twenty one years, in sub-district number ——, ———— township, ———— county, Ohio, composed, in part of township ——, range ——, Virginia Military District; in part of township ——, range ——, United States Military District; in part of, &c., taken ———— ——, 186—.

Names of parents or guardians.	Names of youth	No. in Tp. —, R. —, Virginia Military.		No. in Tp. —, R. —, U. S. Military.		No. in Tp. —, R. —, ————		No. in ————		Number of Section.	Recapitulation.	White.	Colored.
		Males.	Females.	Males.	Females.	Males.	Females.	Males.	Females.				
	White Youth.												
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	No residing in	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	Virg'a Military	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	U. S. "	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	—— "	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	.....	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	.....	..	..
Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	...	.....	..	..
	Colored Youth.												
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	..	.....	..	..
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	....	.....	..	..

We hereby certify the above to be a correct list of the white and colored youth in sub-district number ——, ———— township, ———— county, taken between the first and third Monday of September, 186—.

———— ————,
———— ————,
———— ————, } *Local Directors.*

September ——, 186—.

REPORT OF TOWNSHIP CLERK.

Annual Report of the enumeration of youth between the ages of five and twenty-one years in ——— ——— township, ——— ——— county, taken and returned to the undersigned, township clerk of said township, by the Local Directors, between the first and third Mondays of September, 186—.

Number of Sub-district.	Number of Youth.		No. in Tp. —, R. —,	No. in Tp. —, R. —,	No. in Tp. —, R —.	No. in Tp. —, R. —,	No in Tp. —, R. —,	No. of Section.	Total Number.
	Males.	Females.							
	White Youth.								
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
Total ...	.....	.....	.....	.....	.....	.....	.....	..	.....
	Colored Youth.								
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
.....	.....	.....	.....	.....	.....	.....	.....	...	.....
Total ...	.....	.....	.....	.....	.....	.....	.....	...	.....

The foregoing is correct.
September —, 186—.

Attest:

———— ————,
Township Clerk.

Abstract of the Enumeration, taken between the first and third Mondays of September, 18—, of the Unmarried Youth between the Ages of five and twenty-one years, residing within the County of ———.

Names of Townships and Special School Districts.*	White.			Colored.			Whole No. of white and colored unmarried youth, of both sexes, between the ages of 5 and 21 years, in each township	No. in Virginia Military District.	No. in United States Military District.	No. in Connecticut Western Reserve.
	No of Males.	No. of Females	Total White.	No. of Males.	No of Females	Total Colored				
Totals										

186 .

Auditor of said County.

* Please give the enumeration of Special Districts separate from the Townships in which they are situated.

FORM OF DEED.

THIS INDENTURE, made the —— day of ———, one thousand eight hundred and ——, between —— —— and —— —— his wife. of the county of ———, in the State of Ohio, parties of the first part, and ————, as township board of education of the township of ———, county and State aforesaid, party of the second part, witnesseth: That the said parties of the first part, in consideration of ——— to them duly paid before the delivery hereof, have bargained and sold, and by these presents do grant and convey, to the said party of the second part, its successors and assigns forever, [*here describe the premises,*] with the appurtenances, and all the estate, title and interest of the said parties of the first part therein. And the said parties of the first part do hereby covenant and agree with the said party of the second part, that at the time of the delivery hereof the said parties of the first part were the lawful owners of the premises above granted, and seized thereof in fee simple absolute, and that they will warrant and defend the above granted premises in the quiet and peaceful possession of the said party of the second part, and its successors and assigns forever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

Sealed and declared in presence of ——— ——— [SEAL.]
——— ——— [SEAL.]

The State of Ohio, ——— *County.*

Personally appeared before me, —— —— and —— —— his wife, grantors in the above deed, and acknowledged the same to be their voluntary act and deed; and the said —— —— being at the same time examined by me, apart from her said husband, and the contents of the above deed made known to her, she there declared that she voluntarily signed, sealed and acknowledged the same, and that she is still satisfied therewith.

Witness my hand and seal, this ——— day of ———, A. D. 186—.

——— ———.

NOTE.—The Board should carefully investigate the title to property before purchasing, and no school-house should be erected until a satisfactory title is obtained. The property should be declared in the corporate name of the "Township Board of Education," and not in the name of the directors.

FORM OF LEASE.

THIS INDENTURE, made the ——— day of ———, one thousand eight hundred and ——, between ——— ———, of the county of ———, in the State of Ohio, of the first part, and the township board of education of the township of ———, county and State aforesaid, of the second part, witnesseth: That the said party of the first part, for the consideration hereinafter mentioned, has demised, granted and leased, and does hereby demise, grant and lease, unto the said party of the second part, its successors and assigns, [*here describe the premises,*] with all the privileges and appurtenances thereunto belonging. To have and to hold the said demised premises, with the appurtenances, for and during the term of ——— from the ——— day of ——— ; and the said party of the second part, for itself and assigns, agrees to pay the said party of the first part, for the said premises, the annual rent of ——— dollars, in quarter-yearly installments, on the ——— day of ———, respectively.

In testimony whereof, the said parties have hereunto set their hands and seals, this ——— day of ———, A. D. 186—. ——— ——— [SEAL.]
In presence of ——— ——— [SEAL.]
Chairman of the Board.
——— ——— [SEAL.]
Clerk.

State of Ohio, ——— *County*.

Before me personally appeared ——— ———, grantor in the above instrument, and acknowledged the same to be ——— voluntary act and deed, for the uses and purposes therein mentioned.

In testimony whereof, I have hereunto subscribed my name, this ——— day of ———, A. D. 186—.

——— ———.

NOTE.—If the lease be for three years or more, it must be acknowledged, attested by two witnesses, and recorded. If for a less term, it need not be executed with these formalities. The time of paying rent may be filled up according to contract. The consideration may be money, or any thing else, and the form varied accordingly.

APPOINTMENT OF ACTING MANAGER.

———, 186—.

This day the board of education of —— township, —— county, met, and, deeming it necessary, did appoint —— —— acting manager of schools for said township, and empowered him to perform the following duties:

1. To, &c.

By order of the Board.
—— ——, *Clerk.*

ASSIGNMENT OF SCHOLARS.

———, 186—.

This day the board of education of —— township, —— county, met, and assigned scholars to primary schools in said townships as follows:

To sub-district No. —
A. B.
C. D.
etc.
To sub-district No. —
E. F.
G. H.
etc.

By order of the Board.
—— ——, *Clerk.*

NOTE.—A copy of the assignment to each sub-district is to be furnished to the teacher.

APPOINTMENT OF LIBRARIAN.

———, ———, 186—.

The board of education of ——— township, ——— county, has this day appointed ——— to act as librarian, and to take charge of the school apparatus in sub-district No. —, of said township, for the term of — year.

By order of the board,

——— ———, Clerk.

BOND OF LIBRARIAN.

Know all men by these presents, that we ——— and ——— are held and bound unto the State of Ohio in the sum of ——— hundred dollars, for the payment of which we jointly and severally bind ourselves, our and each of our heirs, administrators and assigns. Sealed with our seals this —— day of ———, eighteen hundred and sixty —.

The condition of this obligation is such, that whereas the board of education of ——— township, ——— county, on the —— day of ———, eighteen hundred and sixty —, appointed and authorized said ——— to act as librarian and to take charge of the school apparatus in district No. —— of said township.

Now, if said ——— shall faithfully, honestly, and impartially, and in accordance with such rules and regulations as may, from time to time, be prescribed by said board, discharge his duty under and by virtue of said appointment, for the term of — year, and until his successor shall be duly appointed, then his obligation shall be void.

——— ———, [SEAL]

——— ———, [SEAL.]

Attest:

——— ———.

TEACHERS' DAILY REGISTER.

Daily Register for the Term commencing ——— —, 186—, and ending ——— —, 186—.

No. of Scholars.	Names of Pupils.	Ages of Pupils.		1	2	3	4	5	7	8	9	10	11	12	14	15	16	17	18	19	21	22	23	24	25	26	No. of days during the term.	Remarks.
			M	T	W	T.	F.	S.	M	T.	W	T	F.	S.	M	T.	W	T.	F.	S.	M	T	W	T.	F.	S.		
1																												
2																												
3																												
4																												
5																												
6																												
7																												
8																												

NOTE.—The day of the month should be placed in the column over the day of the week. To find the average number in daily attendance, add together the number of scholars present on each day of the week or month, and divide the sum by the number of days the school was in session during the week or month. In like manner the average for a term or year is to be found.

Teachers may use such marks to denote absence or tardiness as they shall see fit.

TEACHER'S GENERAL REGISTER,

For the Term commencing ——— ———, 186—, and ending ——— ———, 186—, in ——— township, ——— county, sub district No —.

No. of Scholars.	Names of pupils.	Age of pupils		Date of commencement.	Time of attendance	What branches they have studied.												Text Books.
		M.	F.		Days.	Orthography.	Reading.	Writing.	Arithmetic.	Grammar.	Geography.	Algebra.	Geometry.	Chemistry.	Philosophy.	Astronomy.	Surveying.	Algebra. Geography. Grammar. Arithmetic.
1							†	†	†									
2							†		†	†	†							
3							†	†		†	†							
4						†												
5						†												
6			7				†	†		†								
7			10															
8																		
9																		
10																		
11																		
12																		
13																		
14																		

The above is correct.
——— ———, 186—.

——— ———,
Teacher.

The branches studied are maked thus † opposite the name.

TEACHER'S REPORT TO THE TOWNSHIP CLERK,

For the Term, commencing —— 186—, and ending —— 186—, in Sub-District No. —, —— Township, —— County, Ohio.

No. months winter school has been kept	No months summer school has been kept	NO. OF SCHOLARS ENROLLED.					NO. OF SCHOLARS IN AVERAGE DAILY ATTENDANCE.					COMPENSATION PER MONTH.	
		COMMON.		HIGH.		Total Males and Females.	COMMON.		HIGH.		Total Males and Females	COMMON.	HIGH.
		Male.	Female.	Male.	Female.		Male.	Female.	Male.	Female		Dollars.	Dollars
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

BRANCHES OF STUDY TAUGHT, AND NUMBER OF SCHOLARS IN EACH BRANCH.

Subject of Study.	No. of Scholars.	Name of Author.	Subject of Study.	No. of Scholars.	Name of Author.
Alphabet			Vocal Music		
Spelling			Algebra		
Reading			Geometry		
Penmanship			Natural Philosophy		
Mental Arithmetic			Mental Philosophy		
Written Arithmetic			Moral Philosophy		
Geography			Chemistry		
English Grammar			Rhetoric		
Physiology			Astronomy		
Map Drawing			Geology		
Composition			Latin		
Declamation			Greek		
Drawing			German		
History			French		

I certify the above to be correct.

_____

Teacher Sub District No. —.

CENTRAL, OR HIGH SCHOOLS.

Notice is hereby given by the board of education of ——— township, ——— county, that in the opinion of said board it has become desirable to establish a *central, or high* school in said township; that for such purpose it is necessary to levy a tax of — mills to the dollar, (*or say of* —— *hundred dollars*) and that on the —— day of ———, at — o'clock —. —., there will be a meeting of the qualified voters of said township, at the place of holding elections in said township, when and where important questions will be submitted to the voters of said township, relative to the cost and location of the building, and other provisions necessary for the establishment of a central or high school in said township, and also the amount of tax which shall be levied for the purpose.

———, 186—. *By order of the Board.*

————, *Clerk.*

CERTIFICATE OF ANNUAL ESTIMATES.

To the Auditor of ——— *County:*

It is hereby certified by the board of education of ——— township that the entire amount of money necessary to be assessed on the taxable property of said township, and expended therein, for school purposes, as directed in the 22d section of the "act to provide for the reorganization, supervision and maintenance of common schools," passed March 14, 1853, is —— dollars, as follows:

For continuing school six months..... $——

For ————————, ... ——

———, 186—. *By order of the Board.*

————, *Clerk.*

ORDER ON TREASURY.

No. —. ———, 186—.

To the Treasurer ——— *Township,* ——— *County:*

Pay ————, ——— dollars, for ————.

By order of the Board.

$—

————, *Clerk.*

FORM OF A BOND FOR TOWNSHIP TREASURERS, AS TREASURERS OF THE SCHOOL FUND.

Know all Men by these Presents, That we, — —, — —, and — —, of —— county, Ohio, are held and firmly bound, to the state of Ohio, in the sum of — dollars, for the payment of which we do jointly and severally bind ourselves, our and each of our heirs and legal representatives. Sealed with our seals and dated this — day of ——, in the year 186—.

The condition of this obligation is, that, whereas, the said — —, was, on the — day of —, 18—, duly elected treasurer of —— township, —— county. Now, if said — —, as treasurer, shall faithfully disburse and pay over, according to law, all such school or other funds, and moneys, as shall, from time to time, come into his hands for school purposes, then this obligation to be void; otherwise to be and remain in full force.

—— ——, [SEAL.]
—— ——, [SEAL.]
—— ——, [SEAL.]

Executed in presence of
——— ———,
——— ———,

NOTE.—This can readily be altered to apply to city treasurer, as provided in Sec 34.

CERTIFICATE OF TREASURER'S BOND.

——— ———, 186—.

It is hereby certified that — — has executed and filed with me a bond for the faithful disbursement, as a treasurer of —— township, —— county, of all school funds that may come into his hands as such treasurer; which bond, dated April —, 186—, is in the penalty of —— dollars, and has been approved by the trustees of said township.

——— ———,
Township Clerk said Township.

NOTE.—The above can be altered so as to apply to the city treasurer's bond, provided for in section 34.

FORM OF TOWNSHIP TREASURER'S ACCOUNT WITH THE SEVERAL SUB DISTRICTS.

——— ———, Treasurer of ——— Township, ——— County, in account with said Township for School Funds.

186—.	—	To proportion of State fund for use of said sub district.....	—	—	186—.	—	By amount to ——— ———, Teacher, on the order of the Township Clerk, Voucher No. ———, ...	—	—
		" same ground rents of Section Sixteen.....	—	—				—	—
		" same of fines received from ——— ———	—	—				—	—
			.....	....				....	.....

——— ———, Treasurer of ——— Township, ——— County, in account with Sub-District No. ———, of said Township.

186—.	—	To proportion of State fund for use of said sub-district.....	—	—	186—.	—	By amount paid to ——— ———, Teacher, on the order of the Township Clerk, Voucher No. ———, ...	—	—
		" same of fines received from ——— ———					" balance remaining in the treasury to the credit of said sub district.....	—	—
		" same of ground rents of Section Sixteen.....	—	—				—	—
			—	—				—	—
			.....	.....					
			—	—					
			.....	.....					

ORM OF TOWNSHIP TREASURER'S GENERAL ACCOUNT, ON WHICH TO SETTLE WITH COUNTY AUDITOR.

——— ———, Treasurer of ——— Township, ——— County, in account with said Township, for School Funds belonging to the several Sub-Districts.

186—.		Dr.	186—.			
	To cash received of county treasurer, on the order of —— ——, county auditor, being the amount of school funds due to said —— township.....	———		By cash paid —— ——, Teacher, on the order of the Township Clerk, Voucher No. ——.....	———	———
	" cash received from ——— and ———, for fines.....	———		" cash paid —— ——, Teacher, on the order of the Township Clerk, Voucher No ——.....	———	———
	" cash received for rent on school lands.....	———		" cash paid —— ——, Teacher, on the order of the Township Clerk, Voucher No. ——	———	———
				" cash paid —— ——, Teacher, on the order of the Township Clerk, Voucher No. ——..... ...	———	———
				" for balance on hand.....	———	———
		———			———	———
		.....			.....	.....

Office of Treasurer of ——— Township, ——— County.

——— ———, Treasurer.

——— —, 186—.

FORM OF TOWNSHIP TREASURER'S BOOK OF GENERAL ACCOUNTS.

——— ———, Treasurer of ——— Township, ——— County, in account with said Township for School Funds.

186—.		To amount received from County Treasury ..	—	—	186—.		By amount paid Sub-District No. —, on the order of the Township Clerk, as per Voucher No. —, ...	—	—
		" amount received from ——— ———, for fines collected.....	—	—			" same paid Sub District No. —, as per Voucher No. —, ...	—	—
		" amount received from ——— ———, for ground rent of Section 16, Township —, of Range —, ...	—	—			" balance remaining in Treasury....	—	—
			—	—				—	—
			....	..				....	..
186—.			—	—				—	—
	—								
			—	—				-	

NOTE.—When a change takes place in the office of treasurer, the new incumbent will, in debiting himself with the balance remaining from last year, state the fact of such balance having been received from his predecessor, in case such balance shall be duly paid over, and not otherwise.

VOUCHERS.

No. —. A. ——, ——, 186—.

Received, ——— ——, 186—, of ——— ——, treasurer of ——— township, ——— county, ——— dollars, for services rendered as a teacher in sub-district No. —, in said township, from the —— day of ———, 186—, to the —— day of ———, 186—; in all ——— days.

—— ———, Teacher.

FINAL RECEIPT OF TREASURER.

Received, ——— ——, 186—, of —— ———, late treasurer of ——— township, ——— county, the following moneys and school property, to wit: ——— dollars, being part and parcel of the ——— fund; also, &c.

—— ———, Treasurer.

APPOINTMENT OF SCHOOL EXAMINERS.

Office of Probate Judge,
———, ——— county, O., ——, 186—.

Being satisfied that —— —— is a suitable person to act as a member of the board of school examiners for this county, under the "act to provide for the reorganization, supervision and maintenance of common schools," passed March 14, 1853, I do hereby appoint him to said office for the term of two years from date, and until his successor shall be appointed.

—— ———, Probate Judge.

TO TEACHERS.

The board of examiners of —— county, Ohio, will hold a meeting at the —— of —— ——, in the —— ——, on ——, —— and ——, the —, — and — days of ——, 186—, for the examination of teachers, under the "act to provide for the reorganization, supervision and maintenance of common schools," passed March 14, 1853.

By order of the Board,
—— ———, Clerk.

——, ——, 186—.

SCHOOL TEACHER'S CERTIFICATE.

No. —. OFFICE OF THE BOARD OF SCHOOL EXAMINERS,
——, —— county, O., —— ——, 186—.

This is to certify, that —— —— has been examined and found competent to give instruction in orthography, writing, arithmetic, grammar and geography, ——, ——, ——, and having exhibited satisfactory testimonials of good moral character, —— is authorized to teach these branches in any common school within this county, for the term of —— —— from this —— day ——, A. D. 186—.

By order of the Board,

—— ——,
—— ——, } *Board of Examiners.*
—— ——, Clerk.

———

REVOCATION OF TEACHER'S CERTIFICATE.

To the local directors of sub-district No. —, —— township, —— county, Ohio:

Whereas, the board of examiners of said county, on the — day of ——, 186—, granted a certificate to —— ——, authorizing him to teach orthography, &c., for the term of —— months, and he is now engaged as a teacher in said sub-district:

And, whereas, it has been represented, and said board has become satisfied, that —— —— is an unfit person to be retained as such teacher, in consequence of (*here state the offense*).

Therefore, you are hereby required to discharge and dismiss said —— —— from his said employment. His said certificate is revoked.

By order of the Board,
—— ——, Clerk.

—— —, 186—.

FORM OF REGISTER, TO BE KEPT BY CLERK OF COUNTY BOARD OF EXAMINERS.

Register of Certificates issued to Teachers of Common Schools, of Primary and Higher Grade, in ——— County.

DATE WHEN CERTIFICATE ISSUED.			NAME OF TEACHER.	Number of Certificate.	Time of Continuance.	Males.	Females.	PRIMARY SCHOOL BRANCHES.							HIGHER BRANCHES.						
MONTH.	YEAR.	DAY.						Orthography.	Reading.	Writing.	Arithmetic.	Geography.	Eng. Grammar.	History.	Algebra.	Geometry.	Surveying.	Philosophy.	Chemistry.	Astronomy.	Botany.

OPINIONS OF COMMISSIONERS.

CHAPTER XXI.

ANSWERS TO QUESTIONS ON THE SCHOOL LAW.

QUES. 2.—How is the township clerk to be paid for making an abstract of the enumeration returned to him?

ANS.—By the township, as for other services of like nature rendered as township clerk.

QUES 3.—When the directors neglect to take the enumeration, and the township clerk employs and pays a person to do it, how is the clerk to reimburse himself?

ANS —Charge the amount so paid in account with the township; and then proceed to collect it of the delinquent directors, and credit the amount so collected to the school fund of the township.

QUES. 4 —Are township boards authorized by law to determine what text-books shall be used in the several common schools in their township, and have they a right to confine their selections to one author on each subject?

ANS.—These questions are both answered in the affirmative without any hesitation.

QUES. 5.—What shall be done with those directors who do not abide by the decision of the township boards in regard to text-books?

ANS.—Endeavor to conciliate, if possible, their co-operation, by showing them the importance of leaving this delicate matter to the judgment of the township board, and not to the caprice or preference of every itinerant teacher that may chance to be employed. Failing in this, the township board could proceed against them by *quo warranto*, which would raise the question of authority, and, the decision being against the reluctant directors, a *writ of mandamus* would bring them to a sense of duty.

QUES 7 —May persons be transferred, for educational purposes, from one township to another, when the county line divides the township?

ANS.—This question is also answered in the affirmative, without any hesitation.

QUES. 8.—Does section fifteenth of the new school law relate at all to common sub-district schools, or only to such as the township board may establish apart from these?

ANS.—To both; for the terms "primary schools," "primary common school," and "sub-district school," are all used in the school law with the same import.

QUES. 14.—If a certificate expires during a school term or session, is it good for the entire term?

ANS.—Certainly not. The presentation of such a certificate would not authorize the township clerk to draw an order on the treasurer, in favor of the teacher, for his services during the entire term.

QUES. 15.—By an arrangement between the teacher of a private institution or academy, and the directors of a school district in which said institution is located, the scholars of said district are taught in said institution. Are the principal of said institution or private academy, and all his assistants who give instruction to said district school scholars, obliged by law to obtain certificates in due form from the board of examiners, before the said principal or his assistants are legally entitled to the school moneys belonging to said district, and applicable to the payment of teachers' wages?

Ans.—Undoubtedly they are. See sections 24 and 45, of the new school law. By the arrangement above referred to, said academy became to a certain extent a district school; and the township clerk can not legally draw an order on the township treasurer, in favor of said principal, for the school moneys, or any part thereof, belonging to said district, except on the presentation of the proper certificates of all teachers, who have given instruction to said district school scholars, although the directors should certify such amount to be due him. The true policy and spirit of the law is, that common school scholars—whether taught in separate sub-district schools, or in private institutions as aforesaid—shall be instructed by teachers duly certificated; otherwise the township treasurer would not be authorized to pay over to said teacher or teachers the school moneys of said district, applicable only to the payment of teachers' wages. On this subject I entertain not the least doubt.

Ques. 16.—Does the new school law vest in the directors of the sub-district, or in the township boards, the right to prescribe the general rules and regulations for the government of the primary or sub-district schools?

Ans.—In the township boards, undoubtedly; for although sec. 6 declares that "it shall be the duty of the school directors, in each sub-district, to take the management and control of its local interest and affairs," etc, yet this duty must be performed under and in obedience to such rules and regulations as the township board may prescribe; as in the case of negotiating and making contracts in relation to providing fuel, repairing buildings, or furnishing school-houses, etc., as provided for in sec. 7. A different construction of the law would defeat one of its most important objects, viz., that of equalizing, as far as practicable, the educational privileges of the several sub-districts of the township, and preventing the numerous disparities incident to the *old independent district* system.

The law is very plain on this point, for in sec. 13 it is declared that "it shall also be the further duty of said board to *prescribe rules and regulations* for the government of all common schools within their jurisdiction." Besides, sec 11 makes them a body politic and corporate in law, and vests in them, in their corporate capacity, the title, care and custody of all school-houses, school-house sites, libraries, apparatus, and other property belonging to the school districts. It is evident, then, that their right to prescribe rules, etc., for the direction and government of the sub districts, must be paramount, and that of the directors subordinate.

Ques 17.—Are township boards authorized to appoint the township clerk the acting manager of schools for the township?

Ans—Undoubtedly; for sec. 10 declares "that the township board of education shall consist of the township clerk, and of the local director from each sub district of the township, who has been appointed clerk in his sub-district;" and near the close of sec. 13 it is declared that, "if the board deem it necessary, they may appoint one of their number the acting manager of schools for the township," etc. The township clerk, then, being constituted by the law a member of the board of education, he may, unquestionably, be appointed the "acting manager."

Ques. 18—The board of education of a township, embracing nine school districts under the old school law, proceeded, at a regular meeting, to re-district their township, dividing it into five instead of nine sub-districts; and the judge of the proper court, on application, granted an injunction against the proceedings of the township board, on the ground that the present school law did not authorize them to diminish the number of school districts in a township from what it was under the old law, but only to alter district lines. Ought the injunction to have been granted?

Ans.—Most assuredly not; for it was the intention of the framers of the law, frequently expressed while the subject was pending in the General Assembly, to confer upon township boards the power to alter, by consolidation or otherwise, the several school districts of the township, so as to equalize, to a reasonable extent, their territory, their number of children of school age, and their educational privi-

leges generally. But, according to the opinion of the judge in the case referred to, the number of school districts in any township must remain the same as the new school law found them. Such a construction of the law would contravene one of the principal objects of the Legislature in creating township boards, viz., the removal of many evils incident to the old system—such as the diminution of the pecuniary strength of school districts by an unnecessary multiplication of them, and the consequent employment of an unnecessary number of teachers, from which resulted, as a natural consequence, the necessity of employing cheap and poorly qualified teachers, or of having very short school terms, to say nothing of the very great inequalities, in almost every respect, which existed in the several districts of the same township under the old law.

But, in order to construe the present law so as to "remove the evil and advance the remedy," we are not obliged to go back and look up the evils incident to the old law, or to gather from circumstances the intention of the lawgivers. The provisions of the law, touching the point at issue, are quite obvious.

In sec. 4 it is declared that "the said board shall prepare a map of their township as often as they deem necessary, on which shall be designated the sub-districts of the township, which they may *change or alter* at any regular session, and the *number of scholars assigned to each;* but no sub-district shall contain within its limits *less than sixty resident scholars by enumeration*, except in cases where, in the opinion of the board, it is *necessary* to reduce the number." Now suppose that the whole number of scholars, by enumeration, in the township above referred to, divided by nine—the number of school districts in it at the time the new law took effect—should give a quotient of twenty or twenty-five, or even thirty or forty, how could the board carry into effect that provision of the law which requires them to assign at least *sixty scholars* to each sub-district? The mere want of nine times sixty scholars in the township would not constitute such an exception to the rule, requiring sixty scholars to be assigned to each district, as is meant by the expression—"except in cases where, in the opinion of the board, it is necessary to reduce the number."

I am, therefore, forced to the conclusion that the judge, in granting said injunction, was either prejudiced against this provision of the law, or that he did not read it understandingly.

QUES. 20.—Has the board of education a legal right to prohibit from a sub-district school persons over twenty-one years of age?

ANS.—Undoubtedly; for the limits of school age are five to twenty-one years.

In section 16 of the school law it is declared "that the board *may* admit to the schools of *higher* grade"—meaning the high or central schools—"scholars over twenty-one years of age." Under the provision embraced in section 13, which declares that "it shall be the further duty of the board to prescribe rules and regulations for the government of all the common schools within their jurisdiction," there can be no doubt that the board possesses the power to prescribe the conditions upon which persons over twenty-one years of age may be admitted to the sub-district schools

It cannot be the design of the law to debar those who are destitute of an education from the privileges of our common schools, simply because they happen to be over twenty-one. But such persons can not claim the privilege, as a matter of course. They must obtain a permit from the board, or from the directors of the sub-district, in accordance with the rules prescribed by the board in regard to this subject. If the applicants are not qualified to enter the high school, or if there be no high school, and the sub-district be not so full that their attendance would materially incommode those under twenty-one years of age, then the board, or the directors under the rules of the board, may properly grant them a permit, in writing, to attend the school.

In short, those who have reached their majority should be treated like minor

children who are not residents of the sub-district. Their participation in the privileges of the school should depend upon the pleasure of the board, or of the directors, in the absence of any regulations prescribed by the board.

QUES. 21.—On New-Year's evening the scholars saw fit to bar the door of a school-house, and to resist the demand of the directors and teacher to open the same, unless a treat of two dollars should be granted. The demand of the scholars was backed up by many of their parents, and by some of the magistrates, who claimed that the directors had no redress, and that the boys had a full right, by the law of custom, to set up against the teacher the claim above mentioned, and exclude him from the school-house till he should comply with their request. At length the teacher paid the two dollars, and so the whole matter was quieted; but it came very near breaking up the school. Upon the above case my opinion has not only been solicited, but I am requested to refer the matter to the Attorney-General for an opinion. The question is also propounded, whether it would be proper and legal to refund to the teacher the two dollars paid by him as aforesaid, out of the school moneys belonging to said district.

OPINION AND ANS.—To decide the above case, the opinion of the Attorney-General is not needed, for the school law settles the matter beyond the contingency of a doubt. Section 11 declares that "the township board of education in each township of the State, and their successors in office, shall be a body politic and corporate in law, and, as such, may contract and be contracted with, sue and be sued, plead and be impleaded, in any court of law or equity in this State; that they shall be and hereby are invested, in their corporate capacity, with the title, care and custody of all *school-houses* and school-house sites," etc, "*to control the same* in such manner as they may think will best subserve the interests of common schools and the cause of education."

In section 13 it is also declared that "it shall be the further duty of said board to *prescribe rules and regulations* for the government of all the common schools within their jurisdiction."

Now any person or persons excluding a teacher from his school-house, for the purpose stated in the case submitted to me, or for any other purpose, unless duly authorized to do so by the township board, or by the "rules and regulations" prescribed by them, are trespassers, and, as such, are liable to the same penalties, at the suit of said township board, as at the suit of a private citizen, whose private dwelling they should close against him, with a view of extorting his money. The existence of the improper and absurd custom to which reference is made does not affect the case. Custom, especially a vicious and improper one, can never be pleaded against a positive statutory enactment. Even the common law of England yields when it comes in conflict with a parliamentary enactment, the expressed will of the law-making power. Let it be distinctly understood, then, that any person or persons closing the doors of a school-house, and stopping a school, without an express order or permission from the township board, are trespassers, and liable to treble damages.

The two dollars paid by the teacher can not legally be refunded out of the school money, and, should the directors make any such misapplication of the school fund, it would be good cause for withholding from their district its share of the school fund the subsequent year. I have written very plainly in relation to this matter, because I feel that it is high time the ridiculous and absurd custom referred to should be banished from the State, as a remnant of the "dark ages." When so much is being done to elevate the character, improve the condition and extend the usefulness of our common schools, and to make them not only nurseries of sound learning, but of those elevated feelings and virtuous sentiments which adorn and dignify human character, it is a disgrace that any community should for a moment countenance a custom which, in the estimation of all sensible and judicious men, is degrading in all its tendencies, and subversive of good order.

QUES. 22.—What entitles children to the right of attending a particular school, and what precludes them from that right?

ANS.—All children of school age are entitled to the privilege of attending the school in which their parents, guardians, or employers reside, unless excluded by the directors, on account of their misconduct. In other words, all children included in the annual enumeration of the directors of any school district, are entitled to attend the school in such district. The annual enumeration should include all the children over five and under twenty-one years of age, who shall, at the time of taking such enumeration, actually be in the district, constituting a part of the family of their parents, guardians, or employers, if such parents, guardians, or employers, actually reside, at the time, in such district, although such residence be temporary; but such enumeration should not include children belonging to the family of any person who shall be an inhabitant of any other district in this State, in which such children may, by law, be included in the enumeration of its directors. As to what constitutes a residence in law, the courts have decided that a man cannot gain a residence in a place unless he goes there "*with the intention of remaining.*" If, however, a person who is not an inhabitant of some other district, resides temporarily in a given district, all the children belonging to his family, should be included in the enumeration, and be permitted to attend the school in said district.

Children of non-resident parents, coming into a district and *boarding* for the purpose of attending school therein, are not entitled to such privileges, as a matter of course; but they may be admitted into such school with the approbation, in writing, of the directors thereof, and upon such terms as they may deem just; but such permission should not be granted to the children of non-resident parents, nor to persons over twenty-one years of age, if by such admission the school would become too much crowded. In such cases it would be proper to charge tuition; for such non-resident children are not entitled, as a matter of course, to any share of the public school fund belonging to such district; and their tuition in such case may be charged, in the first instance, to the person with whom the children of non-resident parents board, unless, by express notice in writing, he declines being accountable for such tuition. When, however, such children are *hired* to *labor* or *service*, in good faith, in the family of an inhabitant of the district, or are regarded and treated as a *part of the family* of such inhabitant, and not merely *temporary boarders*, they are entitled to participate, equally with the other children of the district, in the privileges of the school.

QUES. 23.—Are the local treasurers of the special school districts, mentioned in the part of sec. 67 of the new school act, required to settle with county auditors for all school moneys which may come into their hands as such treasurers?

ANS.—Undoubtedly; if not so required, a large portion of the school fund would not be accounted for at the office of said auditors.

Sec 29 requires township treasurers to settle annually, between the 1st and 20th of February, with the county auditor, and account to him for all the moneys received; from whom, and on what account, and the amount paid out for school purposes in his township. It also requires him to examine the vouchers for such payments, and if satisfied with the correctness thereof, to certify the same; which certificate is declared to be, *prima facie*, a discharge of such treasurer, etc. Sec. 34 imposes similar duties and obligations upon the treasurers of cities and incorporated villages, which have been constituted special school districts by sec. 32.

From the fact that sec. 67 requires the several school boards, or other school officers, acting under the provisions of any of the acts to which reference is made in this section, to make similar reports of school statistics annually; and from the fact that this section forbids county treasurers to pay over any portion of the school fund to any local treasurer, etc., except on the order of the proper county, and

forbids any such order to be drawn by him, unless the local treasurer, etc., shall first deposit with said auditor an abstract of the enumeration of scholars, and other statistics, relative to the schools under their charge, as required by the law, of teachers, local directors, and boards of education in townships, etc., it is reasonable to infer that the treasurers of these special boards of education should settle with the auditors of their proper counties, in the manner prescribed in sec. 29, for treasurers of townships.

QUES. 24.—Is each part of a *fractional district* entitled to three directors, and a representative in the township board?

ANS.—Certainly not—for this would give to each part of such district equal power with an entire district. This is evidently not in accordance with the spirit of the law, or with the intention of its framers. The misapprehension has arisen from the language used in the first section: "The several school districts and *fractional parts* thereof, which now are or may hereafter be established in the several organized townships of the state, shall be regarded as sub-districts, and be confided to the management and control of local directors, as hereinafter provided."

By the expression "*and fractional parts thereof*," is meant those sub-districts which contain territory lying in two or more townships. Hereafter, for the sake of avoiding misapprehension, I shall designate such sub-districts by the term *joint* sub-districts, and those sub-districts which lie wholly in one township, by the appellation of *entire* sub-districts, or simply *sub-districts*.

It was the intention of the law to declare all the old school districts to be *sub-districts*. Of course, a school district, though composed of fractional parts of adjoining townships, was still but *one* sub-district, and entitled to elect, as provided in section 2d, "at the usual hour and place of holding district meetings," but *one* set of local directors, composed of three persons only—one of whom would be chosen clerk, and as such would be entitled to a seat in the township board of education in that township in which the *school house might be located*, no matter where the clerk might reside, so that he be a resident within the limits of the school district. For school purposes, he represents all the fractional parts of the sub-district, reside in which fraction he may, in the board of education of that township in which the school house happens to be located. Sec. 16.

QUES 30.—Are members of township boards of education entitled by law to compensation for their services?

ANS.—The above question has been addressed to the commissioner at least fifty times, and each time it has been answered, unhesitatingly, in the negative. A proposition to pay them was voted down while the school law was pending in the late general assembly.

Officers created by the school law cannot claim an allowance for their services, unless the law, in express terms, so declares. The reasons assigned at the time the school law was under consideration, for not allowing members of township boards of education a compensation for their services, were the great number of salaried school officers that would thereby be created, and the general belief that after a few years it would not be necessary for such boards to meet more than twice in each year, and that the management and supervision of the different schools, and the educational interests of the township could be performed by the "*acting manager*," whom the board is authorized to appoint, and to whom "they may allow a reasonable compensation for his services." Sec. 13.

QUES. 31.—Are township clerks entitled to remuneration for their services as members of the township boards of education—or for making and transmitting to county auditors, abstracts of the enumeration returned to them—or for taking the enumeration in case the directors in any sub district fail to take and return the same—or for filling vacancies in the boards of local directors—or for drawing in

favor of teachers—or for acting as clerks at meetings relative to central or high schools—or for prosecuting township treasurers on their bonds—or for reporting to the state commissioner when required to do so? If so, from whom and from what funds?

ANS.—These questions, or at least some of them, have been propounded perhaps a hundred times, and have as often been answered as follows, viz:

The rule on this subject is understood to be, that township or county officers, neither salaried nor created by the school law, but upon whom it imposes certain new duties, are entitled to the same allowance out of their respective county or township treasuries, for services performed and expenses incurred under the school law, as is allowed them for other services of like nature rendered in their official capacity.

QUES. 32 —Are township treasurers to be paid for services performed under the school law, out of the township school fund?

ANS —Certainly not; but out of the township treasury; for near the close of sec. 28, it is declared that "the township *trustees*"—(not the township board of education)—"shall allow the township treasurer a compensation *equal to one per cent on*"—not one per cent. *of*—"all school funds by him disbursed."

QUES. 37.—In a certain township, embracing, before the passage of the new school law, nine school districts, the electors thereof proceeded to elect, on the second Monday of April last, three local directors in each of said sub-districts. In due time, said directors took the oath of office required by law, met and organized by appointing one of their number clerk of the sub-district.

On the third Monday of April last, the said clerks of the said nine sub districts, together with the clerk of the township, met and organized as a township board of education according to law. They then proceeded to re-district their township according to the provisions of sec 14 of the new school act, reducing the number of sub-districts from nine to six. They next proceeded to determine by estimate, the amount of money necessary to be raised for school purposes, according to the provisions of sec. 22, and certified the same to the county auditor, &c. Now some of the inhabitants refuse to pay the tax, and threaten an injunction, if an effort be made to enforce its collection, on the ground that the board, by the act of reducing the number of sub-districts have virtually ousted themselves, or, at least, a part of themselves, of their office as members of said board, and, therefore, they could not legally make the estimate as aforesaid. The question is, are they by such act ousted of their office as members of the township board?

ANS.—Certainly not; for they have performed no unauthorized act. The law absolutely required them so to re-district their township as that "no sub district should contain less than *sixty* resident scholars by enumeration, excepting cases where in the opinion of the board, it was *necessary* to reduce the number."

The error of those who raise the objection to the legality of the proceedings of the board, lies in the fact, that they have entirely overlooked the circumstance, that as soon as said board was organized, its members held two offices, one as local directors of their particular sub-districts, and the other as members of the township board of education. By the act of abolishing some of the sub-districts, they abolished the *sub-office* only of the members from the abolished districts.

The township board is, of course, re-organized every year, and its members hold their office for the year, whatever alterations or changes they may make in the sub-districts. On the third Monday of April in each year, each sub-district sends up its clerk to constitute the township board for the ensuing year.

When a sub-district is abolished and its territory attached to other sub-districts, the jurisdiction of the local directors of those sub-districts to which said territory is attached, is extended over such territory so attached, and the office of the local directors of the sub-district so abolished, is ended.

QUES. 39.—There is in the fractional township of Washington, three hundred and twenty acres of school lands belonging to said township. The citizens of said township, in 1852, under the act of March 5, 1851, elected three trustees and one treasurer to take charge of said lands, and to lease the same. The annual proceeds from the rents amount to the sum of $135 50. The sum of $135 50 is now in the hands of said treasurer, being the proceeds of one year's rents. Said trustees sold rail timber to the amount of $60 75, which sum is also in the hands of said trustees and treasurer. Said trustees received from the C. C. & C. R. R. the sum of $300 as damages for the right of way, which sum is also in the hands of said trustees and treasurer. Said treasurer refuses to pay said sums of money into the township treasury, unless said trustees authorize him so to do, and the said trustees refuse to give said order.

The said trustees and treasurer pretend to derive all their powers from the 8th and 9th sections of the act to incorporate the original surveyed townships, passed March 14, 1831, and refuse to pay over said fund to the township treasurer, but keep it loaned out among themselves, and will not allow the board of education to make a distribution of it. What is to be done?

ANS.—The case above presented is a plain one; for sections 8 and 9 of the act of 1831, are modified by the present school law, which declares, in section 17, "That the township treasurer in each township, shall be the treasurer of school funds for school purposes, belonging to the township, arising from *whatever source;*" and in section 24, it also declares that "all school funds which may come into the hands of the township treasurer, from *whatever source*, shall be paid out only on the order of the clerk of the board of education, under the direction of the board;" and near the close of the same section, it is further declared that "such school funds as arise from the sale or *rents of section sixteen*, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong."

Section first of the new school act, makes "each organized township in the State, *but one school district* for all purposes connected with the general interests of education in the township;" and section 27 makes the township treasurer, the treasurer of such general school district, thus dispensing with *school district treasurers.*

Now, then, it must be obvious that the township school treasurer takes the place of the former school district treasurers; and the treasurer of the moneys in question, is bound by the new school law to pay them over—not "to the treasurers of the several school districts," as specified in section 9 of the act of 1831, for there are now no such treasurers—but to the township treasurer, as school treasurer of the entire township; and the township treasurer must pay them over to the districts or parts of districts to which they belong, on the order of the township board of education.

It is manifest, then, that section 9 of the act of 14th March, 1831, is modified by the new school law, and must be so construed as to harmonize with sections 1, 24 and 27 of the present school law.

Should the trustees of said 320 acres of school lands persist in their refusal to direct their treasurer to pay over said moneys to the township treasurer, the township board may apply to the court for a mandamus.

QUES. 40.—In several townships a conflict of jurisdiction has arisen between the local directors and township boards of education. The question submitted is, what are the respective limits of the jurisdiction of school officers?

ANS.—The duties of township boards are *general*, and their jurisdiction extends over the entire township; the duties of local directors are *special*, and their jurisdiction is limited to a particular sub-district, and by the general rules prescribed by the township board, according to the provision of section 13, of the school law, which declares "that it shall be the duty of said board to prescribe rules and regulations for the government of all the common schools within their jurisdiction."

These general rules relate to the alteration of the boundaries of sub-districts; the selection of school-house sites; size, structure and furniture of school-houses; the course of study for each grade of schools, and the selection of the text books to be used in the schools of the township; the care and preservation of school-houses, school furniture, apparatus, library and other school property; the assignment of scholars to the several grades of schools wherever such grades are established, and the admission of scholars to, and their dismissal from any of the schools in the township.

The duties and powers of the local directors, in each sub-district under the *general* regulations prescribed by the township board, are, the particular management and control of its local interests and affairs; the employment of teachers, fixing their salaries, and certifying the amount due them to the township clerk; the dismissal of any teacher, at any time, for such reasons as they may deem sufficient; the visitation of their schools, or the selection of persons to visit them; the negotiating and making of all *necessary* contracts in relation to providing fuel for schools; repairing, building, or furnishing school-houses; purchasing or leasing school-house sites; renting school rooms; and making all other provisions necessary for the convenience and prosperity of the schools within their sub-districts; taking the enumeration of children in their sub-districts, appointing librarians for the district library, determining the place where it shall be kept, and seeing that the library and apparatus are properly preserved.

All these duties may be performed, and all these powers exercised, subject only to the restrictions of the *general* rules prescribed by the township board of education.

Township boards and local directors, disposed to act in good faith and with due regard to each other's rights, powers, and duties, will, it is believed, be able to execute their respective offices without inconvenience or difficulty.

The Commissioner regrets to state that a few cases have come to his knowledge, in which township boards have interfered quite too much with the powers and duties appertaining to local directors; and local directors, on the other hand, have in some instances manifested unreasonable reluctance to obey, and, in a few instances, a contumacious determination to disregard all the rules and regulations prescribed by the township board, however needful such rules might be to promote the best interests of the schools of the township.

Such ill-judged interference on the one side, and obstinacy on the other, can lead to no good results, and may prove disastrous to the schools, if long persisted in by school officers.

QUES. 45.—When one local director only is to be elected at the annual sub-district meeting, and two persons receive an equal number of votes for the office, how is the election to be decided?

ANS.—A "tie vote" in such a case as the one submitted, is tantamount to a "failure to meet and elect," and the remedy for such an event, is provided for in section four of the school law.

After waiting a reasonable time for a special meeting of the voters to be called as prescribed in said section, if none be called, the township clerk may fill the vacancy by appointment, as provided in section three.

QUES. 46.—Does the sub-district clerk hold his office as such, during his continuance in office as director, or one year only?

ANS.—The clerk of a sub-district holds his office as such, for one year, or until a successor shall be elected.

The rule as well as the practice in boards of education, and all similar boards, so far as my information extends on this subject, is for such boards to reorganize annually in all cases where a part of their members are elected, and a part of them go out of office at the end of each year.

QUES. 48.—The citizens of school district No. 7, Union township, Hancock

county, state the subjoined facts, in relation to the above district, viz: seven-eighths of the population of said district are on the two south sections of said district in and near the village of Cannonsburg. The district has had a site which is central to the two south sections, and a school-house on it for the last twelve or fourteen years. Five or six families, now residing on the east, west, and southwest sections of the present site, are obliged to send from one to one and a half miles; and the two or three families residing on the north sections send an equal distance. The board of education have ordered the erection of the school-houses at the geographical centers of the districts. What is the rule and the law on this subject?

Ans.—In section 14 of the new school act, it is declared that, "in the location of schools, the board shall have reference to *population* and *neighborhood*, paying due regard to any *school-house already built or site procured*, as well as to all other circumstances proper to be considered, so as to promote the *best interests of the schools*. Hence it would seem it is not the intention of the legislature to regard, in all cases, the geographical center of a district as the proper site for a school-house; nor should the center as to population determine the site, for such a rule might oppress the minority.

Leaving out of consideration the school-house already erected and the site procured, it might be a safe rule to regard as a suitable site some point nearly intermediate the geographical center, and the center as to population. It is better that half a dozen children should be required to walk a distance of somewhat more than a mile, than that fifty children should be compelled to walk that distance to school.

If the two northern sections of said district are rapidly increasing in population, or are likely to so increase in the course of a few years, that fact should be taken into the account in locating the site; or if there is a prospect that the two northern sections will soon have a population sufficient for a separate school, it would seem best not to change the old site in the southern sections. But if there is no probability that more than one school will be required for the population of the four sections, then regard should be paid to the present, as well as prospective distribution of the population of the entire district.

In adjusting this matter, the members of the board should, in imagination at least, endeavor to place themselves in the several situations and condition of the inhabitants of the entire district, and from these several points of view, carefully consider the interests of all, and then fix upon a site which will accommodate the greatest number, and, at the same time, seriously incommode none.

Ques. 59.—Whose duty is it to determine what text books shall be used in the common schools?

Ans.—In numerous instances I have been requested to recommend a series of text books for the common schools of this State. My uniform response to such requests has been, and will continue to be, that the duty of determining the studies to be pursued, and the school books to be used in the several schools under their control, devolves, according to section 17 of the new school act, upon the boards of education in the several townships of the State.

On the several subjects of study usually pursued in the common schools, there are some half a dozen or more series of text books of nearly equal merit—works upon which men of science, experience and ability have bestowed much thought and labor, and in which they have invested their capital. It would, therefore, be unjust to such authors and their publishers, for the Commissioner of common schools to throw the influence of his official position in favor of one or the other of such meritorious text books.

Again: I am inclined to the opinion, that less importance should be attached to slight differences in the comparative merits of school books than to the advantages of stability, and the importance of employing a teacher well qualified to impart instruction in a proper manner, whatever text book he may be required to

use in his school. To a competent teacher, it is not a matter of very great moment whether he uses this or that arithmetic, grammar or geography; for he can accomplish a good work with a text book of moderate excellence, while an indifferent teacher might fail with one of very superior merits. While, therefore, I shall studiously avoid publishing any opinions upon any of the series submitted for my approval or disapproval, yet I shall not hesitate to express my views freely to individuals who may desire to know my opinion in relation to any series of school books. In regard to the several series upon which I have recently been requested to make known my opinion, I may be permitted to state, that if I were employed in a school in which any one of them were used, I should not take the trouble to change them. The adaptation of this or that series of school books often depends more upon the manner in which both teacher and pupil have been in the habit of investigating a particular subject, than upon the abstract merits of the text book used. There is, not unfrequently, more advantage in knowing how to use a particular tool or implement, than in its relative excellence.

Township boards of education, with the aid and advice of their best teachers, should endeavor, as soon as practicable, to fix upon some one series, and then adhere to it until some new work shall make its appearance, with such superior merit as to warrant the expense of a change. It is the custom in many localities, when the school board has determined upon the books to be used, to adhere to them for at least five years, and then call a meeting for the purpose of ascertaining whether any changes are really demanded. Such a course is productive of many advantages. It helps to give stability to a school system, enabling pupils to progress regularly with their several studies, and prevents much needless expense to parents.

Ques. 52.—Our school district is over two and a half miles square, and in the very center of it lies a farm of some three hundred acres of land, and the owner utterly refuses to convey any portion of it for a school-house site. Is there any law by which our local directors, or the township board of education, can procure a site for a school-house on said farm, if the owner persists in his refusal to sell or lease?

Ans.—There is no such law. A bill was introduced into the late general assembly providing a mode by which township boards of education might, under circumstances like those stated above, obtain a suitable site for a school-house. The bill passed the lower house, but was lost in the senate. The law should most unquestionably make some provision for procuring school-house sites where the owners of the land refuse, without good cause, to sell. If it is right to condemn land for railroads, no good reason can be assigned why some similar provision should not be made for the benefit of common schools and the cause of education. The reason, no doubt, that such a law was not enacted by the late general assembly, was that a majority of the senators and representatives could not bring their minds to believe that in this land of common schools, this republican country, where the principle is fully recognized "that there is no security for a free government, but in the *intelligence* and *virtue* of the people," any gentleman could be found who would not, for love or money, accommodate his friends, his neighbors, the rising generation, his country and humanity, by selling or leasing to them a small piece of ground for a school-house site!

Ques. 54.—Is a colored person eligible to the office of local director, in the sub-district in which he resides? and if appointed clerk in his sub-district, can he lawfully claim a seat in the township board of education?

Ans.—In article XV., sec. 4, of the constitution of Ohio, the following language is used, viz: "No person shall be elected or appointed to any office in this state, unless he possess the *qualifications* of an elector."

Section 1, article V., of the same instrument, reads as follows, to wit: "Every *white male citizen* of the United States, of the age of twenty-one years, who shall

have been a resident of the state one year next preceding the election, and of the county, township, or ward in which he resides, such time as may be provided by law, shall have the *qualifications* of an *elector*, and be entitled to vote at all elections."

From the above provisions of the constitution of this state, it is obvious that colored persons are not eligible to the office of local director of a sub-district.

Schools for colored youth must be established, regulated and controlled by township boards of education, in accordance with the provisions contained in sec. 31 of the new school act.

QUES. 55.—Is it lawful for a township board of education to abolish a sub-district containing more than sixty resident scholars, by enumeration, for the purpose of annexing the territory thereof to an incorporated village containing not less than three hundred inhabitants, when a majority of the legal voters of said district are opposed to such annexation?

ANS.—In sec 33 of the new school act, it is declared that "It shall be *lawful* for the township board of education in any township in which a city or incorporated village is situated, by and with the consent of the board of education of said city or incorporated village, to transfer, for educational purposes, the scholars of such parts of their respective townships as lie adjacent thereto, and that such transfer shall be *controlled*, and such school *supported* in the *same manner*, and on the *like principle*, as in cases of like transfers for the *convenience of schools*, where two or more townships adjoin, as provided in this act."

In sec. 16, it is declared that "Whenever it shall happen that persons are so situated as to be *better accommodated* at the school of an adjoining township, it shall be the *duty* of the respective boards of the townships in which such persons reside, to transfer them for educational purposes."

From the above provisions of the law, it is obvious that the propriety, as well as the legality, of annexing territory and transferring persons to cities and incorporated villages, for school purposes, must be determined on the principle of "*the better accommodation* of the persons" requesting to be transferred; and the wishes of the persons so to be transferred constitute the *best evidence* of such "*better accommodation.*"

QUES. 57.—When a person is employed to teach school by the month, of how many days shall a month consist? On what *holidays* may a teacher dismiss his school? To what vacations would a teacher be entitled when employed by the year?

ANS.—The holidays on which a teacher may dismiss his school, are such as it is customary to observe, either through the country or in particular localities; among these may be enumerated the Fourth of July, Thanksgiving, Christmas, New Year, etc.

The teacher may, also, unless restrained by special contract to the contrary, dismiss his school on the afternoon of each Saturday, or on every Saturday, or every alternate Saturday, according to the particular custom of the district in that respect. In the absence of an express agreement to the contrary, a school month consists of *four weeks*, or a *calendar month*, according to the *particular custom* of the district, city, or township. If, in a particular locality, *four weeks* have been regarded as a *school month*, and both teacher and directors are cognizant of the custom when the former is employed, and the contract between the parties does not expressly declare what shall be considered a month, the matter of time must be determined by the particular custom of the place.

The length of vacations to which the teachers are entitled when employed to teach by the year, is, like the length of a school month, determined by custom, in the absence of an express agreement between the parties.

QUES. 59.—When a local director is appointed clerk of a sub-district, does he

hold his office as a member of the township board of education during the entire term for which he was elected local director of his sub-district?

ANS.—He holds his office as such clerk for one year, and until his successor is elected and qualified.

The rule, as well as the practice, which has generally been adopted by school directors, boards of education, and all similar boards or bodies corporate, where some of the members are elected, and others go out of office annually, or at stated periods, is to organize as often as such new members are elected.

This is a convenient rule; for in case the clerk of the board of local directors does not satisfactorily represent the wishes of his district in the township board, the inhabitants of the district can, at the next annual election, take such measures as will secure the appointment of another person to said office.

QUES. 60.—How are transfers of territory to be made to cities and incorporated villages organized as to schools under the "act for the better regulation of schools in cities, towns," etc., passed February 21, 1849, or other acts creating *special* school districts?

ANS.—The rule in relation to the transfers of territory to or from special school districts, is the same as in the case of cities and villages organized as to schools under the provisions of the general school law, as expressed in the last clause of sec. 32, and sec. 33 of the new school act.

It is perfectly competent and lawful for the board of education of a township in which a special district is situated, by and with the consent of the board of education of such special district, to transfer thereto, for educational purposes, the scholars of such parts of the township as lie adjacent thereto, when the inhabitants of the territory to be annexed desire it, and when their better accommodation, as well as the best interests of the schools and the cause of education, would justify the transfer.

QUES 61.—Are township boards of education authorized by law to change or alter the sub-districts in their respective townships, at any other than the *regular* meetings of the board?

ANS.—In section 12 of the new school law, it is declared that "it shall be the duty of township boards of education to hold *regular sessions* on the third Mondays of April and of September of each year, with power to *adjourn*, from time to time, or to hold *special* meetings at any other time or place within the proper township, as they may think desirable for the transaction of business," viz: "business which may be necessary in relation to the subject of either the primary or graded schools of the township"

Section fourteen authorizes said boards to change or alter, at any *regular session*, the sub-districts of the township.

From the above language, it is obvious that the framers of the law did not intend to authorize the re-districting of townships, except at the *regular meetings* of the board.

It would seem that they regarded the rights and interests involved in the change or alteration of school districts, as of too grave a character to justify such change or alteration at a *special* meeting, called at any time, and with very little publicity among the inhabitants in regard to what was going to be transacted at such special meeting.

It would be well if all such alterations were made at the regular meeting in April. The school moneys derived from the State tax being distributed to several sub-districts in the township, in proportion to the enumeration of scholars, a great practical inconvenience would result from the alteration of districts at the regular meeting in September; for the law requires the directors in each sub-district to take, or cause to be taken, annually, between the first and third Monday of September, an enumeration of all unmarried white and colored youth, noting them separately, between the ages of five and twenty-one years, resident within such sub-

district, and not temporarily there, and return a certified copy thereof to the township clerk.

To re-district a township at the regular meeting in September, after the enumeration is taken, would prevent the distribution of the school moneys derived from the State tax among the several sub-districts in the township, according to the number of youth in each, after such alteration has been made.

Whenever, therefore, it becomes necessary to re-district a township at the September meeting, the local directors should be requested to postpone taking the enumeration until such alterations are made, so that the school moneys applicable to the payment of teachers may be distributed among the several sub-districts according to the number of scholars of school age in each sub-district as altered.

QUES 63—Are township boards of education legally empowered to change or alter school districts, by consolidation or otherwise, at *special* meetings?

ANS.—They are not; for sec. 14 empowers them to change or alter sub-districts at any *regular* sessions on the third Monday of April and September in each year, with power, however, to adjourn, from time to time, until all the business required to be transacted at *regular* meetings shall have been accomplished.

A *regular* meeting, then, adjourned from day to day, or from week to week, etc., is still a *regular* meeting, at which sub-districts may be changed or altered.

The framers of the law seemed to regard the re-districting of a township, as well as the change or alteration of a sub-district, as matters of too much importance to be performed at any other than the *regular* meetings of the board, notice of which would be brought to every inhabitant of the township or sub-district by the law itself. Besides, if alterations are required, they should be made as the law requires, in April or September, just previous to the opening of the winter or spring sessions of the schools. Great practical inconvenience might result from such change or alteration in the middle of a school term or session, and township boards of education be greatly embarrassed in distributing the school moneys applicable to the payment of teachers.

QUES. 67.—In a sub-district in which a new school-house is being erected for the accommodation of three hundred and fifty scholars, $300 is needed to complete the new house and repair the old one; and the questions submitted are, how shall the money be raised, in case the township board of education refuse to certify the amount so needed to the county auditor for assessment on the taxable property of the township, on or before the first Monday of June next; and whether the local directors of said sub-district are legally empowered to borrow the said sum of $300, and secure its payment by executing a mortgage upon the said school-house?

ANS.—In sec 7 of the school law, it is declared that all contracts for the specific purposes therein mentioned, must be negotiated and made "under such rules and regulations as the township board of education may prescribe," and that local directors are not empowered to enter into contracts involving an expenditure beyond a certain amount, without authority from the township board.

As the township board, by the provisions contained in sec. 11, is made a "body politic and corporate in law—capable of contracting and being contracted with—and as such is vested, in its corporate capacity, with the title, care and custody of all school-houses," etc., it follows, as a matter of course, that local directors are not empowered to execute mortgages upon school-houses or other school property to raise funds for school purposes.

It is exceedingly questionable whether even township boards of education possess any such power; for in sec. 43, it is expressly declared that "each and every lot or parcel of land which heretofore has been, or hereafter shall be, appropriated for the use of common schools in this state, on which there has been or shall be a school-house erected, and which has been or shall be occupied for the purpose of accommodating a common school of whatever grade, in the usual manner, from

time to time, howsoever or by whomsoever the legal title to the same may be held and vested, shall be, and the same is hereby exempted from the sale on execution, *or other writ or order in the nature of an execution.*"

A school-house and site being thus exempted from sale, etc., it would seem that a mortgage executed on the same, to secure the cost of building a new school-house, could be of no validity.

Besides, there can be no need of any such security; for when the township board authorizes the local directors of a sub-district to negotiate and make a contract for the erection of a new school-house, etc., the last clause of section 7 holds the township board "responsible in its corporate capacity for the performance thereof;" and should they neglect or refuse to make and certify at the proper time, the necessary estimates therefor, to the county auditor, the court, on application, would compel them to do so, by *writ of mandamus*, or the party suffering by their neglect could enter suit against them, as provided for in section 65. Such a debt is virtually a debt against the whole township, and must be assessed on the taxable property of the township, which would be a far better security than a mortgage on a school-house, even if it could be legally given for the purpose of securing the debt as proposed.

QUES. 69.—Are the inhabitants of an incorporated village, including the territory annexed to the same for school purposes, which contains not less than three hundred inhabitants, and which, by the new school law, is created a separate school district, with a separate board of education, still at liberty to adopt the provisions of the "act for the better regulation of schools in cities, towns," etc., passed February 21, 1849, and the acts amendatory thereto?

ANS.—They are thus authorized; for the present school law "must not be so construed as to repeal, change, or modify in any respect," the several provisions of certain acts specified in the first clause of section 67. In the last clause of section 1, it is expressly declared that "nothing in the new school law shall be so construed as to give to the township board of education jurisdiction over any territory in the township included within the limits of any city or incorporated village, which now is, *or may hereafter be governed* as to schools by any *special* or *other* act, specified in the *sixty-seventh section* of this act." The language, "or may *hereafter* be governed," etc., settles the question beyond doubt.

One of the most important characteristics of our school system, is its flexibility. If the inhabitants of a city, town or incorporated village, containing a certain number of inhabitants, organized as to schools under any of the acts referred to in the first part of section 67, prefer the provisions contained in sections 32, 33, 34 and 35 of the general school law, section 66 authorizes the change, and points out the way in which it may be effected. On the other hand, if the inhabitants of any city, town or village, desire to have their schools organized under any of the acts mentioned in the first part of section 67, it can be done in the manner prescribed in those acts respectively. Hence the inhabitants of no city, town or village in the state, can have any reason to complain of the general assembly of the state for not providing them with a school law adapted to their peculiar condition.

QUES.—71.—In the incorporated village of Greenfield, there is a good seminary building, which, with a little remodeling, would accommodate all the scholars in the corporation. There is no public school-house in which the common schools of the village can be kept during the coming winter.

Under the above circumstances, would it be legal for the board of education to enter into arrangements with the principal of said seminary, for the instruction of all the scholars of the town, agreeing to pay him the public funds applicable to the payment of teachers, and authorize him to charge those sending to the school such tuition fees as would remunerate him and his assistants for the balance of the expense of instructing such scholars? And has the board the power to pro-

vide for keeping the common schools in operation, after the state funds have been exhausted, by charging parents, pro rata, such tuition fees as would cover the balance of the expense?

Ans.—A negative answer must be returned to both of the above questions; for the present school law contains no provisions authorising local directors or boards of education to raise by rate bill, made out against those sending to school, in proportion to the number of children sent, to be ascertained by the teachers's list, as under the former school, for the purpose of meeting any balance for the payment of teachers' wages, or other school expenses, incurred beyond the amount apportioned to a district from the state school funds.

In section 63, it is expressly provided that, "for the purpose of affording the advantages of a *free education* to all the youth of this state, the state common school fund shall hereafter consist of such a sum," &c. In the last clause of section 24, it is declared to be the duty of "each township board to make the necessary provisions for continuing the schools in operation in their respective townships for at least seven months in each year; and this provision must be made in the manner prescribed in the first clause of section 22, where it is made the "duty of the board of education in each organized township of the state, annually to determine by estimate, as nearly as practicable, such *additional amount* as the board may think necessary, not exceeding two mills on the dollar valuation of the taxable property of the township," for the purpose of prolonging, after the state funds have been exhausted, the terms of the several sub-district or primary schools in the township. By the provisions contained in sections 32, 33, 34 and 35, each city or incorporated village, &c., is created a separate school district, with a board of education, authorized "to perform the same duties, and to exercise all the powers which are by this act conferred upon township boards of education."

Whenever it shall become necessary or expedient, then, to prolong, after the state funds have been exhausted, the schools in any city or incorporated village, organized as schools, under the provisions of the general school law, the board of education of such city or villarge should "make an estimate for that purpose, and certify the same to the county auditor," according to the provisions contained in section 22.

Ques. 73.—In a certain sub-district, seven colored youth were enumerated in October last. The county auditor apportioned the school money belonging to the township in which said sub-district is situated, to the several sub-districts in said township, in proportion to the number of youth in each, without distinguishing the amount distributed on account of said colored youth. There are no other colored youth in the township, consequently no school for colored children has been established by the township board of education. The local directors refuse to admit said colored children to the school in said sub district; but wish to appropriate the money derived from the state school tax on account of said colored youth, to the education of the white youth in said sub-district. Does the school law authorise such an appropriation to be made?

Ans.—It does not. The law requires the directors in each sub-district to enumerate separately the colored youth, in order that the amount of school funds applicable to the payment of teachers, and apportioned to any township on account of the colored youth resident therein, may be expended for their instruction, and for no other purpose.

There is some ambiguity, it is true, in the language employed in section 31, owing, it is believed, to faulty punctuation. But from all the provisions contained in the law relative to colored youth, and from the statements of those who aided in drawing up those provisions, the following may be regarded as the fair and legitimate construction:

1. The proper boards of education are required to establish, within their re-

spective jurisdictions, one or more separate schools for colored children, when the whole number by enumeration exceeds thirty, and to continue said schools in operation until the moneys apportioned on account of said colored youth shall be exhausted, or until the average number in attendance shall be less than fifteen for any one month. In the latter case, it is made the duty of the board of education, or other school officers, to discontinue said school or schools for a period not exceeding six months at any one time.

2. When the whole number by enumeration is less than thirty and more than fifteen, it is the duty of the board to provide a school for colored children, whenever the funds applicable to that purpose shall be sufficient to keep the school in operation a reasonable length of time.

3. If the number of colored children shall be less than fifteen, the directors shall reserve the money raised on the number of said colored children, and the money so reserved shall be appropriated for the education of such children, under the direction of the township board.

4. The money so reserved for the education of colored children, may be used to procure for them private instruction; or the teacher of the sub-district school may be employed to instruct them in an evening school, or at such other times as may be deemed expedient; or they may be instructed during the vacation of the school for white youth; or they may be admitted to the common school of the sub-district, if no objections are raised against such an arrangement.

Ques. 75.—In a certain sub-district there are three different denominations or organized churches who have no church building belonging to either of them, but have heretofore used the school-house, one Saturday and Sunday, each month. We now have a good new school-house, nearly completed. About two-thirds of the district are in favor of using the new house as the place of the regular meetings of their respective churches; the other third, who have church buildings of their own out of the district, oppose it. Those opposed contend that they should not be compelled by law to support any "religious denomination;" that they were compelled by law to build the new school-house for *school purposes only*, and not for a church—for "religious societies" whose doctrines they may not believe, or wish to support.

The main point upon which we desire a public answer is this:

Have the local directors authority to permit a religious society to use a school-house as a regular place of worship?

Or has the township board of education power to permit a school-house in a sub-district to be used regularly by any religious society as a place of worship for said society?

Should the township board or local directors permit such use of any school-house, in opposition to the wishes of a third, or *any number*, of the citizens of a sub-district, what is the remedy of those who oppose it, or feel aggrieved in consequence?

Ans.—By sec. 11 of the school law, township boards of education are invested, in their corporate capacity, with the title, care and custody of all school-houses, school-house sites, school libraries, apparatus, or other property belonging to the school districts, as now organized, or which may be hereafter organized, within the limits of their jurisdiction, with full power to control the same in such manner as they may think will best subserve the interest of the common schools and the cause of education.

By sec. 22, township boards of education are required, annually, to determine, by estimate, as nearly as practicable, the entire amount of money necessary to be expended in repairing, building, or furnishing school-houses, in procuring school-house sites, and for all school purposes other than the payment of teachers, to make known the same, by a certificate in writing, etc., to the auditor of the proper

county, who shall thereupon assess the entire amount of such estimate on *all the taxable property in the township*, etc.

From the foregoing it is obvious that school-houses, etc., do not belong to the sub-districts in which they are located, but are the property of the township, and their use must, in accordance with the provisions of the school law, be subject to the control of the township boards of education; and if used for any other than for school purposes, it must be with the assent and approbation of such boards, and of the inhabitants of the sub-districts generally.

The question, to what uses school-houses should be confined by boards of education, is one of great delicacy, and demands much consideration. The general principle in regard to questions of this nature is this: that it is the duty of boards of education to exercise such a general supervision over the care and management of the school-houses in the several sub-districts, as that the instruction of the pupils in the schools shall not be embarrassed by any use of the houses other than for school purposes, and that the school property of the township, the furniture, books, apparatus, papers, belonging to the schools, or the pupils, shall not be injured or destroyed. Any use of the school-houses in subordination to these restrictions, and not inconsistent with the main purposes for which they were designed, must be left to the discreet determination of the boards of education, who should pay due regard to the reasonable wishes of the local directors and inhabitants of the sub-districts, remembering, meanwhile, that all the property of the township must, under the present school law, be taxed for building, furnishing, or repairing school houses.

School-houses, then, are now the property of the township, and subject to the control of the boards of education, within the limitations of the law.

The purposes for which they were erected must be pursued, and nothing should be permitted to interfere with these purposes. But when these purposes are accomplished, there is neither reason nor law for prohibiting their application to any object of social or moral improvement which the inhabitants may sanction and desire. Upon this principle, and subject to the restrictions and limitations referred to, they may be used, out of school hours, and when not wanted for school purposes, for religious meetings, Sunday-schools, lectures, debating societies, or any moral, literary or useful purpose, with the consent of the board of education, and with the approbation of the inhabitants and local directors of the sub-districts; and in many of the country districts it is no doubt a very desirable privilege for the inhabitants to be permitted thus to use the school-house.

QUES 76.—Are children of less than half African blood entitled, as a matter of legal right, to the privilege of attending the common schools of this State?

ANS.—To answer the above question, it is necessary to ascertain the judicial construction of the term "white," as used in the Constitution of this State.

In the case of *Gray* v. *The State of Ohio*, found in Vol. IV. Ohio Reports, page 354, it is held that persons nearer white than a mulatto, or half-blood, were entitled to the privileges of *whites*.

Williams v. *School Directors etc.*, Vol. —. Wright's Reports, page 578. In this case the question was, whether the children of a *white* mother and a *father* three-quarters white are *white* children, within the meaning of the school law. Affirmative opinion given.

Thacker v. *Hawk et al*, Vol. XI. Ohio Reports, page 376. In this case it was held that a person nearer white than a mulatto is a *white* person, within the meaning of the Constitution.

Lane v. *Baker et al*, Vol. XII. Ohio Reports, page 237. Held, that youth of negro, Indian and white blood, but of more than half white blood, are entitled to the benefit of the school fund.

According to the decisions in the cases cited, an affirmative answer must be given to the question propounded.

QUES. 77.—The board of education of ——, township directed their clerk to draw orders on the township treasurer for the payment of their services as members of such board, which orders were paid by the treasurer. As soon as it was known that the present school law did not allow compensation to members of township boards of education for their services, some of the members were willing to refund, but others were not. How shall the school funds thus improperly applied be recovered back?

ANS.—Where money is paid out under a mistake, or a misapprehension of the law, the party paying the same may recover it back in a suit as "*for money had, received*," etc.

QUES. 79.—How shall the wages of a teacher employed in a sub-district composed of parts of four townships, be paid, and how shall the other expenses of such a school be defrayed?

ANS.—The local directors should give him a certificate or certificates of the amount or sums due him from the treasurers of each of said townships. These several sums can be easily ascertained; for the enumeration of youth of school age, resident in each of the parts of a joint or fractional sub-district, is required to be separately taken, and reported to the clerk of the township in which such part is situated.

The amount of money necessary to be expended in a fractional sub-district, for school purposes other than for the payment of teachers, should be estimated by the board of education having the control and management of such joint school. The respective boards of the adjoining townships, so connected for school purposes, should certify their share of said amount to the auditor of their county, as a part of their annual estimates for school purposes, and draw orders on their respective township treasurers for said shares, in favor of the board of that township in which such school is located.

The teacher of a school in a fractional sub-district should file his report with the clerk of the township in which the school-house is located, or whose board of education has the control and management of said joint school, and obtain from said clerk a certificate of the fact of his having filed his report as required by law; which certificate he should exhibit to the clerks of the other townships, when he applies to them for orders on the township treasurers for the respective sums certified to be due to him by the local directors of said fractional sub-district.

QUES. 80.—In sub-district No. —, in —— township, no annual meeting for the election of a local director was held on the second Monday of April last, and the township clerk filled the vacancy by appointment. Was the appointment legal?

ANS.—It was not; for it is provided in section 2 of the school law that "each local director shall continue in office until his successor is elected and qualified."

Although the term of office of a local director may regularly expire on the second Monday of April, and no election be held, yet no such vacancy is thereby created as is provided for in section 3 of the school law. The vacancies referred to in that section are those occasioned by the death, refusal to serve, removal out of the sub-district, resignation, or incapacity of such officer.

Whenever the time for holding the annual meeting in a sub-district, for the election of a local director, shall pass without such election being held, it is declared, in section 4, to be "lawful for any three qualified voters of such sub-district to call a special meeting of the voters of such sub-district, for the purpose of electing such directors, on first giving five days' notice, in writing, of the time and place of holding such meeting," etc.

It is evident from the provisions contained in the second, third and fourth sections of the school law, that it was not the design of the Legislature to deprive the electors in a sub-district of the privilege of electing at leat one local director annually.

QUES. 82.—Mr. J——, a teacher in the common schools of the town of M——,

has been prosecuted for inflicting corporal punishment on one of the scholars, who had repeatedly transgressed the rules of his school. It is not pretended that the punishment was disproportionate to the offense, or that the scholar received any personal injury, for the teacher struck him only three blows with an ordinary rod.

What is the law in regard to the right of a teacher to inflict corporal punishment on his scholars? Are there any cases or decisions which settle this question?

Ans.—The question as to the right of a teacher to inflict corporal punishment upon scholars, has never come before the Supreme Court of this State. Teachers have been prosecuted in this as well as in other States for inflicting such punishment, and the question as to their legal right to do so has been frequently raised, but the decisions have very generally been in favor of such right. The teacher being in *loco parentis*, and responsible for the government and proper discipline of his school, is clothed with the same power to punish scholars for refractory conduct which is allowed by law to a parent in the government of his children. The decisions of all the cases of this kind, within the knowledge of the undersigned, have generally turned on the point whether the punishment was reasonable or not.

In a case which came before John C. Spencer, one of the ablest jurors of the State of New York, while he was superintendent *ex officio* of common schools, he decided that "the authority of the teacher to punish his scholars extends to acts done in the school room or on the play-ground. The teacher of a school has, necessarily, the government of it, and he may prescribe the rules and principles on which such government will be conducted. The trustees should not interfere with the discipline of the school, except on complaint of misconduct on the part of the teacher; and they should then invariably sustain such teacher, unless his conduct has been grossly wrong"

A similar decision was made by John A. Dix, a distinguished statesman and jurist, while he was superintendent of common schools. He said: "The teacher is responsible for maintaining good order, and he must be the judge of the degree and nature of the punishment required, where his authority is set at defiance. At the same time, he is liable to the party injured for any abuse of a prerogative which is wholly derived from custom."

In Kent's Commentaries, seventh edition, vol. ii page 212, note, the following decision may be found: "A schoolmaster, who stands in *loco parentis*, may, in proper cases, inflict moderate and reasonable chastisement" *State* v. *Prendergrass*.

The subjoined cases are somewhat analogous. "The master of a vessel may inflict moderate correction on his seamen, for sufficient cause; yet if he exceeds the bounds of moderation, and is guilty of unnecessary severity, he will be liable for a trespass." 14 Johns. Rep. 119. "A master may justify the chastisement of his apprentice, servant, or scholar, if it is done with a proper instrument and in a proper manner." 3 Salkeld, 47.

In Wharton's American Criminal Law, page 464, the following principle is laid down: "It is admissible for the defendant to show that the alleged battery was merely the correcting of a child by its parent, the correcting of a servant or scholar by his master, or the punishment of the criminal by a proper officer; but if the parent or master chastising the child exceed the bound of moderation, and inflict cruel and merciless punishment, he is a trespasser, and liable to be punished by indictment. The law confides to schoolmasters and teachers a discretionary power in the infliction of punishment upon pupils, and will not hold them responsible criminally, unless the punishment be such as to occasion permanent injury to the child, or be inflicted merely to gratify their own evil passions."

From the foregoing opinions and decisions, the principle would seem to be pretty well settled, that the power allowed by law to the parent over the person of his child is, by the act of sending the child to school, delegated, for the time being, to the teacher; and that the same circumstances which would justify a parent in

resorting to corporal punishment, in order to subdue a disobedient child, will also justify a teacher in the use of the same means to control a refractory scholar.

There has been, it is true, much diversity of opinion among eminent educationists, and others, as to the necessity, expediency, or even utility, of corporal punishment as a means of school government; but the right of the teacher thus to punish his scholars, for stubborn and continued resistance to his authority, has not been judicially denied.

QUES. 83.—In the sub-district No. —, in —— township, an individual holding a proper certification, was duly employed by the local directors of said sub-district to teach a school therein, for the term of four months. After teaching two months and a half, several of the inhabitants became quite dissatisfied with him and the school; and the local directors informed him that they had determined to close the school, and that his services would no longer be required. But he insisted that he had a legal right to teach the school until the expiration of the time for which he had been engaged. The local directors then locked the school-house door, and thus prevented him from continuing the school. The local directors were then notified that he was ready to resume and go on with the school whenever the door of the school-house should be opened.

Out of this transaction, two questions have arisen, viz: 1. Whether an incompetent or negligent teacher can legally be dismissed before the expiration of the term for which he was employed, without first procuring from the county board of examiners a revocation of his certificate?

2. How can a teacher obtain redress when he has been improperly dismissed?

ANS.—By sec. 6 of the school law, it is made the duty of local directors to employ teachers, and to dismiss them, *at any time*, for such *reasons* as *they* may deem *sufficient*.

From this language it is quite obvious that, under proper circumstances, local directors may legally dismiss a teacher before the expiration of the time mentioned in their contract with him, and without first procuring a revocation of his certificate. But in as much as it is declared in said section that such dismission must be for *reasons deemed sufficient*, the general rule of law demands that such reasons must be good, valid and substantial, and not mere prejudices, or groundless dissatisfaction. If the moral character of the teacher referred to, or his general management of the school, were such as in the estimation of all candid, judicious men, to render him an unfit person to take charge of a school, whether such unfitness resulted from a want of learning, ability, or industry, the action of the local directors was clearly right, and the teacher cannot recover wages for the whole time embraced in his contract. In other words, if the teacher was incompetent, the local directors were legally empowered to dismiss him, and to rescind the contract made with him. They employed him as a well qualified, fully competent teacher, and the moment he ceased to be such, there was a failure of the consideration for the contract. * * * * * *

When local directors are so unfortunate as to employ an incompetent teacher, the law vests in them a choice of remedies. They may either dismiss him at once, or they may bring the case before the county examiners, with a written specification of the complaints against him, and request a revocation of his certificate, or, at least, an investigation of the case; and the revocation, if made, would be tantamount to a dismission. But local directors are not required to take this circuitous and dilatory mode of getting rid of an incompetent teacher. In all cases, however, where there is any reasonable doubt as to the qualifications and fitness of the teacher, it would be preferable to let the examiners investigate the facts and decide the question of his competency. By the provisions contained in secs. 6 and 45 of the school law, two safeguards are thrown around the common schools, viz: 1st, the power of local directors to dismiss teachers who fail to sustain a good moral character, or to teach a good school; 2d, the authority vested

in the county examiners to revoke the certificates of teachers for negligence or incompetency.

QUES. 84.—Among the sub-districts in —— township, some diversity prevails in regard to boarding teachers. In some of the sub-districts, teachers board themselves, and the expense of their board constitutes a part of their monthly or quarterly salaries; but in other sub-districts the inhabitants who send their children to school, gratuitously board the teachers. The question has therefore arisen, whether any portion of the state school fund, or of that raised in the township for the purpose of prolonging the schools, can legally be expended in paying the board bills of teachers?

ANS.—If by the terms of the contract made with the teacher, the latter engages to teach the school for a given sum per month, or by the quarter, and board himself, it is very evident that his salary or wages includes the cost of his board, and the state or township school fund can legally be applied in payment thereof. But if the teacher is boarded by the inhabitants of the sub-district, or, in other words, if he "*boards round*," as the practice is usually termed, his board must be regarded as a gratuity on the part of the inhabitants, and can not properly be considered as any part of his wages, to be paid for out of the state or township school fund, which is made applicable to the payment of teachers' wages only.

While the undersigned would not desire to interfere with any arrangement between teachers and local directors, made with a view to lengthen out the school funds and prolong the schools, yet it is proper to state, that there is no legal authority for making a contract with a teacher that he shall "*board round*," because such a contract can not be enforced on the inhabitants of a sub-district. But as the people in some parts of the state are reluctant to relinquish a custom to which they have been for a long time habituated, there can be no serious objection to its continuance, provided all the inhabitants of the district agree to it, and provided also, the custom is uniform throughout all the sub-districts in the township. If, however, in some of the sub-districts of the township, the salaries of teachers include the expense of their board, but not in others, great inequalities, in regard to the benefits derived from the township school tax, must inevitably result; for the law requires such a tax to be assessed on all the taxable property in the township. It would seem desirable, then, that the teachers in all the sub-districts should "*board round*," or else all should board themselves.

Where township boards of education can not induce the inhabitants to adopt the same mode of providing for the board of teachers, the inequalities arising from the want of uniformity in this respect may still be obviated as follows: Let the local directors contract with the teacher for a specific sum per month, or by the quarter, including, of course, the expense of board; and then let a further agreement be made that if satisfactory board shall be furnished him by those who send their children to school, he will pay them whatever sum per week shall be agreed on. Unless, however, the practice of "*boarding round*" can be adopted in all the sub-districts, it would be decidedly preferable to abandon it in all, as it is usually attended with many disadvantages to the schools, and much embarrassment and loss of time to the teacher.

The teacher needs a steady home, that he may have opportunity for study, and that special preparation for each day's work, which is indispensable to the highest success in teaching. The custom of "*boarding round*," had its origin in a desire to diminish the amount of the rate-bills which were formerly assessed on the inhabitants to defray the expenses of the school. But since the present school law has abolished the system of rate-bills, the custom of "*boarding round*" may, with great propriety, be abolished also.

QUES. 85.—It is claimed by some of the citizens of the village of ——, that a teacher has no legal authority to punish his scholars for disorderly, immoral, or improper acts done while on their way to or from school, or at noon. If such is

the law, how shall those be restrained who abuse their school mates, and use profane and unbecoming language in their presence, before or after school, or at noon?

Ans.—The legal right of the teacher to punish his scholars for disorderly acts done in the school-room or on the play ground, before the opening of the school, after its close, during morning or afternoon recess, or at noon, has been fully recognized by the courts of this country. But whether his authority to punish his scholars extends to immoral or disorderly conduct elsewhere, is not so fully established. By some it is contended that the legal right of a teacher to inflict corporal punishment upon a scholar in any case, is derived from the fact that he stands in "*loco parentis*," and therefore it can not be extended to acts done before this relation has commenced, or after it has terminated, without the express consent of the parent. It is further contended that this delegation to the teacher of the power allowed by law to the parent over the person of his child, does not take place till the child has reached the school premises, and must end when he leaves for home. On the contrary, it is maintained by others, that the right of a teacher to hold his scholars responsible for improper conduct on their way to and from school, is fully sanctioned by usage. Under all the circumstances, it is believed that the most prudent course for a teacher to take in a case like the one presented, would be to notify the parent of the misconduct complained of, and if his permission to punish the offending scholar can not be obtained, and the disorderly behavior be repeated, then to refer the matter to the board of education.

There can be no doubt that boards of education possess the legal power to make and enforce such rules and regulations as in their judgment may be necessary for the best interests of the schools within their jurisdiction; and it is their duty as well as their right to coöperate with the teacher in the government of the school, and to aid him to the extent of their power and influence in the enforcement of reasonable and proper rules and regulations, and to dismiss a scholar from the school whenever he uses at school, or on his way to or from the same, such rude, vulgar or profane language, and exhibits such a degree of moral depravity generally, as to render his association with other scholars dangerous to the latter, or whenever he manifests such violent insubordination as to render the maintenance of discipline and order in the school impracticable or extremely difficult. It is also the duty as well as the legal right of the local directors to see that the general character, usefulness, and prosperity of the school are not impaired by allowing those to remain in it, whose whole influence, conduct, and bad character, have forfeited all claim to the enjoyment of its privileges.

Ques. 86.—Does the new school law empower the householders, the local directors, or the township board of education, to select and purchase sites for school houses in sub-districts?

Ans.—It empowers township boards of education, unquestionably. This is evident from the provisions contained in the first, eleventh, fourteenth and fifteenth sections of the law.

By the eighth section of the school act, passed March 7, 1838, the board of local directors and their successors in office, in each school district, was declared to be a body politic and corporate in law, and, as such, capable of contracting and being contracted with, suing and being sued, pleading and being impleaded in any court of law or equity in this state, and of receiving any gift, grant, donation or devise, made to, or for the use of such district; and also of receiving a deed of conveyance or lease for any land whereon to erect a school house or houses, &c. By sec. 10 of the present school law, the same is declared in regard to township boards of education. By sec. 9 of the act of 1838, it was declared that the board of local directors should have power to divide their district into sub-districts, and select sites for school-houses and purchase the same. By the last clause of sec. 14 of the present school act, the same power is conferred upon township boards

of education; for it is there declared to be "the duty of the board to establish a school in each sub-district of the township of such grade as the public good in their opinion may require; and in the *location of primary schools or schools of higher grade*, the board shall have reference to population and neighborhood," etc.

Under the present law, then, local directors are not bodies corporate and politic, etc., nor are they empowered to select or purchase sites for school-houses, except under the direction and subject to the rules and regulations prescribed by the township board of education.

By reference to the school acts passed in 1821, 1825, 1829, 1831, 1834, 1835, 1838, and in 1853, it will be seen that the mode of selecting school-house sites, as well as that of deciding upon the erection and cost of school-houses, has undergone frequent changes. Prior to the passage of the school act of 1838, either a majority, or two-thirds, or three-fifths of the householders, or tax payers, or qualified voters of a school district, at the annual meeting, or at a special meeting called with ten, or twenty, or thirty days' notice, determined upon the location of the site, as well as upon the erection and cost of the school-house. By the school act of 1838, the power to select and purchase school-house sites was given to local directors; but the right of deciding whether a school-house should be erected or not, and what amount of money should be expended therefor, was still left with the householders of the several school districts.

By the present school act, township boards of education are empowered to select and purchase school house sites, to determine the cost of new school-houses, to make estimates therefor, and to certify the same to their county auditors. In short, the township school system is analogous to the graded or union school system, which has been so generally adopted in cities and towns. In both cases the boards of education form, change, or alter the subdistricts, provide for the erection of school-houses, and determine the grades of the schools. The local directors, trustees, or special committees, attend to the details of the business, and see that the orders of the board, and all the rules and regulations prescribed by them for the management and government of the schools, are carried into full and efficient execution.

The undersigned would, however, impress upon boards of education the importance of exercising great care and mature deliberation in the alteration of school districts, the selection of sites for school-houses, and in determining the dimensions and plans for school-houses.

Boards of education should also take the utmost pains to secure the general co-operation of all the directors and inhabitants interested, and to avoid, as far as possible, all those sources of contention and discord, which often prove so fatal to the prosperity, harmony and efficiency of the school. It is often better to submit, for a time, to many inconveniences, than to hazard the disastrous results which uniformly follow any general dissatisfaction with the alteration of school districts, the changing of school-house sites, and the tax imposed for the erection of new school-houses. A little patience and delay will generally enable the good sense of the inhabitants ultimately to perceive what will redound to their best and true interests.

Ques. 87.—Sub district No. — is composed of parts of three townships. The clerk of the township in which one of the parts of said sub-district is situated, neglected to make a separate return of the number of youth of school age residing in such part, and the board of education of said township have refused to pay any thing toward the support of the school in said fractional sub-district. What is the proper course to be pursued under the above circumstances?

Ans.—By section 16 of the school act, it is provided that, when a sub-district is composed of parts of two or more townships, the board of education of that township in which the school-house is situated, shall have the control and management of the school; and the boards of the adjoining townships so connected for

school purposes, shall contribute their share of expenses of every kind necessary to sustain said school.

If any of the boards of the townships so connected for school purposes, refuse or neglect to furnish their share of such expenses, the board having the management of such school, may enter suit against the defaulting boards, as provided in section 65, or compel them by a writ of mandamus to perform the duties which the law enjoins upon them.

The fact that the clerk of the township in which one of the parts of said fractional sub-district is situated, did not make a separate return of the number of youth of school age residing in said part, does not release the board of education of said township from its obligation to pay a part of the expenses incurred in sustaining the school in said fractional sub-district. Where a township clerk has been thus negligent of his duty, the local directors should ascertain by the best evidence in their power, the number of youth residing in each part at the time the last enumeration was required to be taken, and communicate the result to the several boards of education of the townships from parts of which said fractional sub-district is formed. And the number of youth so ascertained to have been residing in each part at the time of taking the last previous enumeration, will determine the share of expenses which each board is legally bound to contribute towards sustaining said school.

The mode in which the affairs of a fractional sub-district are managed in those counties where township boards of education are well posted up in regard to their duties, is as follows, to wit: The board of the township in which the school-house is situated, annually determines by estimate, as nearly as practicable, the amount of money necessary to be expended in said fractional sub-district for fuel, repairs, prolonging the school after the state funds have been exhausted, and for all other purposes connected with the establishment or maintenance of said school. It also determines from the last enumeration of youth of school age, residing in each part, the share of expenses necessary to be incurred for the purposes above stated, which each board is required to provide according to the provisions contained in section 16. The clerk of the board having the management of said school, then certifies said shares to the clerks of the boards of the other townships so connected for school purposes, and each clerk then returns to the county auditor for assessment, the share which section 16 requires the board of his township to provide.

Ques. 88.—The local directors of a sub district in —— township, employed a person to teach their school for the term of four months, at thirty dollars per month, if he taught the school without the aid of an assistant, but if an assistant became necessary, then he was to receive twenty-eight dollars per month. Near the end of the second month, an assistant was employed, who agreed to teach the remainder of the term for eight dollars. At the close of the school the local directors gave the principal teacher a certificate for $120, with the understanding that he should pay the assistant $8. But the clerk of the board of education refused to draw an order on the township treasurer for the $120, in favor of said principal teacher, on the ground that the assistant had obtained no certificate from the board of school examiners. The question submitted is, how shall said assistant obtain payment for his services as aforesaid?

Ans.—In section 45 of the school law, it is declared that no person shall be employed in any primary common school, unless such person shall have first obtained from the board of examiners, or any two of them, a certificate, etc.; and in section 24, it is provided that the clerk of the board of education may draw orders on the township treasurer, for such amount as may have been certified to be due any teacher, by any two of the local directors of the sub-district in which such teacher was employed, on his presenting a certificate of qualification, and depositing with said clerk a true copy thereof.

The provisions of the school law above referred to, are as applicable to the case of an assistant as to that of a principal teacher, and must be strictly complied with, before the clerk of a board of education can legally draw an order on the township treasurer for the whole amount certified to be due to both assistant and principal.

In the case submitted, there seems to be no mode of providing funds to pay said assistant for his services in said school, unless it be done by a voluntary contribution on the part of those who employed him, or who shared in the benefit of his services.

QUES. 91.—The local directors of sub-district number —, in —— township, employed an individual to teach their school, who failed to obtain a certificate; but at the request of the inhabitants of said district, who pledged him his wages, he continued to teach the school At the expiration of his term, the local directors gave him a certificate of the amount due for his services, although he held no certificate of qualification; but the clerk of the board of education declined giving him an order on the township treasurer.

The case was subsequently brought before the board of education, who directed the clerk to issue an order in favor of the said local directors, to reimburse them for money advanced to pay said teacher; but the clerk still refused, on the ground that he was not authorized to draw orders on the township treasurer, for the payment of teachers who do not hold certificates of qualification, as required by the school law. Is it legal and proper for said clerk thus to refuse?

ANS.—In secs. 45 and 24 of the school law, it is declared that no person shall be employed as a teacher in any common school, unless such person shall have first obtained a proper certificate from the board of school examiners; and that the clerk of the board of education is not legally empowered to draw orders on the township treasurer, in favor of teachers, for such amounts as may have been certified to be due them, except on the presentation of their certificates of qualification. No requirement of the law is plainer than that no school funds applicable to the payment of teachers' wages, shall be paid to teachers who have not been able to obtain the proper certificates. The law does not authorize boards of education to order the disbursement of school funds to uncertificated teachers, or to local directors who may have advanced their own money to pay such teachers. Boards of education have no more right to disregard the provisions of the school law in regard to the payment of school funds to teachers, than they have to nullify the entire law. Indeed, this is one of its most important and most sacred provisions.

It has been decided over and over again, by the courts in other states, whose school laws contain provisions in relation to the employment of teachers similar to those in the school law of this state, that school funds which, by the terms of the law, are made applicable to the payment of teachers' wages only, cannot legally be paid to teachers who do not hold the proper certificates, and if so paid in violation of law, the money may be recovered of the school officers thus illegally disbursing it.

It has also been repeatedly decided that when local directors or trustees of school districts employ a person as teacher, who fails to obtain the requisite certificate, they may discharge him, and he cannot recover for services thus rendered. If they engage him as a qualified teacher, the moment he ceases to be so, there is a failure of the consideration for the contract. But if they continue him in the school after notice that he has failed to sustain the requisite examination, or that his certificate had been annulled, it will be regarded as such a continuance of the contract, that they will not be allowed, at a subsequent period, to dispute it, and they will render themselves personally liable for the payment of teachers' wages.

A teacher thus continued, after failing to obtain a proper certificate, if compensated at all for his services, must be paid by the local directors, or by the inhabitants of the district at whose instance he was retained, and whose children

attended the school. Under such circumstances the school becomes a private school, and must be sustained as a private school, and no portion of the public school fund can legally be applied to sustain it.

QUES. 93.—When the local directors of one of the sub districts in a township, in order to secure the services of a teacher competent to give instruction in several of the higher branches, agree to pay him much higher wages than are paid to the teachers in the other sub-districts, would the board of education be justifiable in apportioning to such district more than its *pro rata* share of the school fund raised in said township for the purpose of prolonging its schools, in order that the school in said district may be continued in operation, during the year, for the term of seven months?

ANS.—A deviation from the rule of apportionment, prescribed in sec. 24, would not be proper under such circumstances. It is believed that such a deviation is warrantable only in cases where, owing to the peculiar features of the territory, sparseness of population, bad condition or want of roads, or other unavoidable obstacles, it becomes necessary to form or continue a sub-district, containing quite a small number of youth of school age. To such a weak district more than its *pro rata* share of the township school fund may properly be apportioned in order that its scholars may enjoy the privilege of attending school for at least seven months in each year. It is unquestionably right and proper that township boards of education should make such liberal and reasonable provisions for keeping the schools under their charge in operation a proper length of time, as would enable the local directors to offer such compensation as would secure the services of well-qualified teachers. Boards of education should be frugal, but not parsimonious; liberal, but not extravagant. It is not to be believed that any intelligent citizen will consider that sordidness to be economy which prefers that their children should be brought up in ignorance, or instructed in error, rather than contribute the mere trifle which will secure to them an education sound and accurate, at least as far as it goes. Nor is it necessary, under the present school law, that instruction in our common schools should, in all cases, be restricted to spelling, reading, writing, arithmetic, geography and English grammar. By section 17, the power to determine the studies to be pursued in the several schools under their control is, wisely, vested in the boards of education. In the exercise of this power, they should use a sound discretion, but they should not cripple the efforts of local directors to elevate the character of their schools and foster the interests of education in all judicious ways.

QUES. 94.—In the township of ——, the board of education recently formed a new sub-district, and the question has arisen whether the local directors for said sub-district shall be appointed or elected.

ANS.—The school law does not specify in so many words the precise mode of supplying a new sub-district with a board of local directors. But inasmuch as the law confides to the management and control of the board of education for each organized township in the state the general interests of education therein, and confers upon them power to alter old sub-districts and form new ones, and to prescribe such general rules and regulations as, in their judgment, will best subserve the interests of common schools and the cause of education, the power to perfect the organization of a new sub-district seems to follow as a sort of necessary consequence.

When, therefore, a new sub-district is formed, the board of education should cause to be posted up in three of the most public places of such sub-district, a notice in writing, describing such sub-district, and appointing a time and place for the first meeting of the qualified voters thereof, to elect, by ballot, three school directors.

The erection of a new sub-district does not create such vacancies in the office of local directors as are required by section 3 to be filled by appointment. Besides,

it would be unjust towards the inhabitants of such new sub-district, to obtrude upon them, by appointment, the entire board of local directors.

The mode of determining the respective terms of office of the directors of such new sub-district must be the same as prescribed in section 2 for the first election of local directors in the old sub-districts, under the present school law.

QUES 98.—The person elected to the office of local director in a certain sub-district, being temporarily absent at the time of the election, and not returning so as to take the requisite oath of office within five days thereafter, the township clerk appointed another person to fill said office. Was the appointment legal?

ANS.—It was not; for no vacancy had occurred in said office, by death, refusal or incapacity to serve, removal out of sub-district, or resignation. Although it is provided in section 3 that local directors shall, within five days after their election, take the required oath of office, yet such statutes are generally regarded as *directory*, so far as relates to the time within which the official oath is required to be taken. No practice is more common than to elect to office persons temporarily absent from their place of residence at the time of election, and allow them to qualify by taking the proper oath of office, provided they return within the time expected, or within a reasonable time thereafter. It might operate very unfortunately for a sub-district to be deprived of the services of an efficient school officer, simply because he was prevented, by some casualty beyond his control, from taking his official oath within the time limited by law.

QUES 99.—To what extent are township boards of education legally responsible for the performance of contracts negotiated and made by local directors, in relation to the purchasing of school-house sites, the building, furnishing or reparing of school-houses, the employment of teachers, and the providing of fuel for schools?

ANS.—Boards of education are legally responsible for the performance of such contracts, so far as the same may have been negotiated and made in obedience to the rules and regulations prescribed by said boards, or so far as the consent or order of said boards for making such contracts may have been obtained.

In contracting for the purchase of a school-house site, or for building and furnishing a new school-house, local directors can not exceed, without rendering themselves personally liable, the sum specially estimated and set apart by said boards for those specific objects in each particular year and for each particular sub-district, unless they first procure the consent or authority of said boards of education.

In making contracts for providing fuel, making ordinary repairs, and all other provisions necessary for the convenience and prosperity of their school, local directors may, in the absence of any general rules on the subject, use as much of the money applicable to such purposes as in any one year shall not exceed the amount distributable to their sub-district in proportion to the enumeration of scholars resident therein. But should they exceed that sum without first obtaining an order therefor from the township board of education, they would render themselves personally responsible for such excess, unless it could be made to appear that the board had palpably neglected to make, as the school law requires, the necessary provisions for such indispensable school expenses, and had been contumacious in withholding their assent to the reasonable request of said local directors.

In making contracts with teachers, local directors should not, as a general rule, incur expenses beyond their proportion of the school fund derived from the state, and that raised in the township for the purpose of prolonging the schools therein after the state fund had been exhausted.

The school law imposes upon boards of education the duty of making the necessary provisions for continuing the schools in operation in their respective townships for at least seven months in each year, and requires them annually to determine by estimate, as nearly as practicable, the amount of money necessary to be ex-

pended for that purpose. Local directors ought, therefore, to pay due regard to such estimates, in negotiating the contracts which the law authorizes them to make. Although the estimates of the board prove inadequate to secure the objects designed, yet local directors possess no legal power to supply the deficiency.

When boards of education utterly neglect to perform any duty which the law enjoins upon them, local directors may apply to the proper court for a writ of mandamus to compel its performance.

Boards of education ought to make, in the record of their proceedings, separate entries of the several amounts of money estimated by them for building and furnishing school-houses, for providing fuel and making repairs, and for prolonging schools in the several sub-districts in their respective townships, to the end that local directors may know what sums they are authorized to expend for each of the above purposes.

QUES. 100.—When an incorporated village has become a "*separate school district*" by the operation of section 32 of the school law, is it lawful for the board of education of such village to build a school-house containing rooms sufficient for the accommodation of all the children or scholars of the village, and appropriate one of said rooms to the use of a high school department, without first taking the votes of the electors, as required in sec. 21, in the case of a township high school?

ANS.—It is lawful; for the framers of the law intended to confer upon boards of education in such cities and villages as should be created "*separate school districts*" a *general power* to "establish schools of different grades," whether such schools or grades were to occupy a single or several buildings. It was not contemplated that a public meeting of the qualified voters should be first called to decide the matter. The power of the board to erect one or more school-houses, and to establish schools of one or more grades, is discretionary, and may be exercised without regard to other considerations than the public good.

The language of sections 32, 33 and 35 is too plain to be misunderstood. The city or village board of education consists of three members, and the city or village is created a "*separate school district*," which the board may, if they deem it expedient, divide into sub districts; but if they do so, it does not affect the board or its jurisdiction, nor does it give to the sub-districts the right to elect local directors as in the case of township sub-districts. Yet the city or villags board possess the "*same powers*" as township boards, "*so far as applicable*," and the additional discretionary power given in sec. 33, to divide the city or village into sub-districts or not, and to establish schools of different grades, as the public good may seem to require.

QUES. 102.—When a school examiner vacates his office by resignation, refusal to serve, removal out of the country, or otherwise, should the vacancy be filled by appointment for the full term of two years, or only for the unexpired term of the examiner who thus vacates his office?

ANS.—The appointment should evidently be made for the full term of two years. This is obvious from the language employed in the last clause of sec. 44 of the school act: "All vacancies in said board, which may thereafter occur, whether *from expiration of the term of office*, refusal to serve, or otherwise, shall be filled by *like* appointment by said judge."

It requires no argument to show that vacancies resulting from expiration of the term of office, should be filled by appointment for the full term of two years. But the two classes of vacancies are required to be filled by *like* appointment by said judge. The term "*like*" must either be construed as referring to the length of time which the school examiners, first appointed under the present school law, were entitled to hold their office, or to the fact that appointments to fill vacancies resulting from any of the causes stated in sec. 44, are required to be made for the same length of time, viz: two years.

That the foregoing is a proper interpretation of sec. 44, will appear the more

manifest by observing the language employed on the subject of vacancies, in sec. 3: "In case a vacancy shall occur in the office of director, by death, resignation, refusal to serve, or otherwise, it shall be the duty of the township clerk to fill such vacancy by appointment for the *unexpired* term." In this section of the law, vacancies which are occassioned by expiration of the term of office are not coupled with those resulting from other causes, and for the obvious reason that the former are required to be filled by an election, as provided in secs. 2 and 4. When, therefore, the term of office of a local director has expired, the vacancy resulting therefrom can not be filled by an appointment.

By sec. 2, it is provided that each director shall continue in office until his successor is elected and qualified.

The general rule on this subject is, that where the law does not expressly declare that the appointment shall be for the *unexpired term*, and where it does not provide that one part of the board of officers shall be elected, and another go out of office at regular and stated intervals, all vacancies shall be filled by appointments for the full term.

QUES. 103.—The board of education of Delhi township, in Hamilton county, overlooking the requirement contained in the first clause of sec. 22 of the general school law, did not "determine, by estimate, the entire amount of money necessary to be expended in said township," for purchasing or leasing school-house sites, building, furnishing and repairing school-houses, renting school rooms, providing fuel, and making all the provisions necessary for the convenience and prosperity of the schools, other than the payment of teachers; but they directed the township clerk to draw orders on the school funds derived from the sale of section 16 of said township, to defray the expenses incurred for the above purposes.

The reason assigned in justification of the application of a portion of said funds to other purposes than the payment of teachers, was, that said township annually derived from the State school tax, and the interest accruing from the sale of its section sixteen, a larger amount of money than was needed for the payment of teachers.

The questions submitted are, can the township treasurer legally pay such orders, and can the county auditor legally allow them in his annual settlement with said treasurer?

ANS.—To both of the above questions a negative answer must be given. For this, many reasons may be assigned, among which are the following, viz:

1. The legislature of Ohio has always regarded the annual income of the "*irreducible common school fund*" as applicable to the payment of teachers only.

2. The earliest general school law on this subject, required "that all moneys arising from the rents or sales of school lands, should be divided among the several school districts, or parts of school districts, according to the number of youth of school age in each district, or part of district." See "act to incorporate the original surveyed townships," passed March 14, 1831. Such a *per capita* distribution is of itself evidence that such moneys constitute strictly a *tuition fund* for the children or youth residing in said districts, or parts of districts.

3. As a third reason for regarding the annual income arising from the rents or sale of section sixteen as applicable to the payment of teachers only, may be assigned the fact, that all of the general school laws of this State have contained a section authorizing a specific tax to raise the amount of money necessary to be expended for school purposes *other* than for the payment of teachers, and the language of such sections, like that in sec. 22 of the present school law, is generally imperative. "It *shall be the duty* of the board of education annually to determine by estimates," etc. See general school act, passed March 10, 1831. Sections 13, 31, and 33.

4. In sec. 31 of the general school act of 1831, passed only eight days after the "act to establish a *fund for the support of common schools*," which fund included "the moneys arising from the sale of any lands which heretofore have been or hereafter may be, appropriated by congress for the support of schools in any original surveyed township, or other district of country in this State," the following language may be found, viz: "All the money collected on the tax duplicate of any township for the use of schools, shall be apportioned to the several districts and parts of districts in such township; all the money received from the State treasury on account of interest on the money arising from the sale of section sixteen, or other land in lieu thereof, shall be apportioned to the several districts and parts of districts in the original surveyed township or fractional township to which such land belonged; and all the money for the use of schools in the county, shall, if its appropriation is not otherwise directed by law, be apportioned to the districts in the county, and all such apportionments shall be made to the several districts and parts of districts in proportion to the number of youth residing therein."

In sec. 33 of the same act it was declared, "That all the money which shall come into the treasury of any school district for the use of schools therein, *shall be appropriated, on the order of the directors, to the payment of the teachers of schools in such districts, and to no other purpose.*"

From these provisions, it is quite obvious that the legislature designed that all the moneys derived from a township or county school tax, as well as from the annual interest accruing from the sale of section sixteen, should be applied in payment of teachers' wages only.

In sec. 24 of the present school act it is provided, "That all school funds made applicable to the payment of teachers only, shall be distributed to the several sub-districts and fractional parts thereof in the township, in proportion to the enumeration of scholars." In the same section it is also declared that, "So much of the school moneys coming into the hands of the treasurer as may be derived from the State tax, or from any township tax levied for the continuation of schools after the State fund has been exhausted, shall be applicable to the payment of teachers only; and such school funds as arise from the sale or rents of section sixteen, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong." Then follows the language, "all *other* school funds of the township, etc, shall be applied under the direction of the board, in repairing, building or furnishing school-houses," etc., etc. The word "*other*" in the above quotation, must be interpreted as meaning all school funds other than those derived from the State school tax, the township tax levied for the continuation of schools, and from the sale or rents of section sixteen

5. Another argument in favor of this construction of the school law, and going to show that the legislature never intended that any portion of the annual income of the *irreducible school trust fund* should be applied to any other purpose than the payment of teachers, except when authorized by a special enactment, may be drawn from the fact that such special enactments have sometimes been called for and granted, one of which was passed Feb. 28, 1846, on the application of the directors of district No. 1, in said township of Delhi.

The preamble and act read as follows, to wit:

"Whereas, it is represented to the general assembly that the school funds of school district No. 1, in Delhi township, Hamilton county, are more than sufficient to support a school therein the year round; therefore,

Sec. 1. *Be it enacted by the General Assembly of Ohio*, that the directors of school district No. 1, in Delhi township, Hamilton county, be and they are hereby authorized to appropriate so much as may be necessary for that purpose, any surplus of school funds of said school district, to the building, or enlargement of the school building of said school district, whenever a majority of the legal voters in said

school district shall give their assent in favor of such appropriation, by petition or otherwise."

In conclusion, then, it is maintained that the funds accruing from the sale or rents of section sixteen can legally be applied only in payment of teachers, because in sec. 8 of the "act to incorporate the original surveyed townships," passed March 14, 1831, it is made the duty of the trustees of each surveyed township or fractional township, to "apply all the rents and profits arising from section numbered sixteen, to the special purpose for which it was intended" And in sec. 3 of the "act to establish a fund for the support of common schools," passed March 2, 1831, "the faith of the State of Ohio is pledged for the annual payment of the interest arising on the sale of section sixteen to the person who, and in the manner which, *shall be pointed out by law;* which said interest shall be appropriated and expended for the support and maintenance of common schools within the township or other district of country entitled to the same." In sec. 33 of the school act passed March 10, 1831, the law *did* point out the manner in which said interest should be expended, to wit: in payment of teachers' wages, and the mode of thus using said fund has never been changed by any legislative enactment, except in a few special cases.

It is not deemed necessary in this connection to specify in detail the particular manner in which the schools of Delhi township might be graded so as to afford an opportunity for the judicious and legal expenditure of all the school funds annually derived from the State school tax and from the sale of their section sixteen; but the opinion is unhesitatingly expressed, that no portion of said funds can legally be expended in the manner which the board of education of said township propose, until authorized by a special enactment of the legislature.

QUES. 104.—The board of school examiners of —— county, held an adjourned meeting on the first Monday of April last; and on the same day, and at the same place, the annual township election was held in the court-house. The schools of the town being in session on that day, it became necessary for said board of examiners to rent a room for the purpose of holding said examination, as the free use of no suitable room could be procured. Can the county auditor legally issue his warrant on the county treasurer for the payment of said rent? In other words, does the law authorize county auditors to furnish rooms and fuel, as well as books and stationery, for the purpose of accommodating such examinations?

ANS.—In answering the foregoing question, it is proper to state, that it has not been customary in the counties of this State, or in other States, to rent rooms for the accommodation of meetings held for the examination of teachers. The reason is, no doubt, that boards of school examiners have generally been able to procure suitable rooms without the payment of rent. The use of court-houses, school-houses, churches, or public halls, has generally been freely tendered to them for this important object.

But inasmuch as it is made the "duty of the examiners to fix upon the time of holding meetings for the examination of teachers, in such place in their respective counties as will, in their opinion, best accommodate the greatest number of candidates for examination," it would seem reasonable and proper, when suitable rooms could not be procured without payment of rent, that county auditors should authorize the examiners to hire rooms, and should issue warrants for the payment of the expenses necessarily incurred in procuring such rooms, providing stationery, fuel, etc.

QUES 105.—Can township boards of education legally authorize the transfer of scholars to the school of an incorporated village, or "separate school district," at any other than their *regular meetings?*

ANS.—It is believed that such transfers may legally be made at special meetings, when the better accommodation of the scholars plainly demands it.

In the last clause of section 32 of the school law, it is stated that transfers of territory not within the limits of such corporation may be made to or from such

separate or special school districts, by agreement between the board of education of the township in which such village with the territory annexed may be situated, and the board of education of such village, without requiring that such agreement shall be made at the *regular* meetings only of said boards.

In the last clause of section 33 it is declared to be lawful for the township board of education of any township in which such incorporated village is situated, by and with the consent of the village board, to transfer thereto, for educational purposes, the scholars of such parts of their township as lie adjacent thereto, and that all such transfers shall be controlled on the same principles as in case of like transfers for the convenience of schools where two or more townships adjoin, as provided in section 16 of the school act. And in section 16 it is made the *duty* of the respective boards to transfer persons for educational purposes whenever it shall appear that they are so situated as to be *better accommodated* at the school of an adjoining township. In neither of these cases is it required that such transfer shall be authorized or assented to by said boards of education at their *regular* meetings *only*.

These cases seem to constitute an exception to the rule laid down in section 14 for the general re-districting of townships. By this section it is made the duty of the board to prepare, or cause to be prepared, a map of their township as often as they deem necessary, and to designate thereon the sub-districts of the township, and to change or alter the same, viz., the map and the sub-districts, at any *regular session*. This provision evidently relates to the general re-districting of the township, the abolition or consolidation of sub-districts, the creation of new sub-districts, or the essential alteration of old ones; but it does not control the provisions contained in sections 16, 32 and 33, in relation to transfers of scholars from one township to another, or to the school of a separate or special school district.

QUES. 106.—A youth, now fourteen years of age, and an orphan, resided since the death of his parents with his sister in Sandusky, until a year ago, when he visited his brothers in Indiana and Illinois. Having, however, always regarded his home as at his sister's, he returned to this State, and when she moved to the village of —— he went with her, and was permitted to attend the common school of said village. Not long since, he went to live with a gentleman, a resident of said village, expecting to remain with him for an indefinite period of time, perhaps until he should be twenty-one years old, unless prevented by some misunderstanding, not then apprehended.

The question has been raised by the board of education, as to the right of said youth to attend the union school of said village, as a resident scholar. Does the school law give him that right?

ANS.—Perhaps the best way to settle the above question is to inquire whether said youth might legally have been included in the annual enumeration of the youth of said village, had the law required such enumeration to be taken at the very time said question arose. In section 8 of the present school law it is declared that such enumeration shall include all those who are *residents within the school district*, and not *temporarily* there. The youth in question was not *temporarily* in said village, for he came there, as it would seem, with the *intention of remaining*, and that constituted him in law a *resident*.

Moreover, in section 63 it is declared that the State school fund is raised for the express purpose of affording the advantages of *a free education to all the youth of this State;* and there can be no doubt that the boy referred to is one of said youth, and, as such, is entitled to the privilege of attending some one of the common schools of the State; and if some one, it must be that of the village already referred to.

The question as to what particular school the youth of school age have a right to attend, is well settled in the following cases, viz.:

1. They are entitled to the privilege of attending the school in the district where *their parents*, guardians, or employers reside, although such residence be tempo-

rary, provided they actually compose a part of the family of such parents, guardians, or employer.

2. If they are *hired* to labor or service in the family of an inhabitant of the district, and are regarded and treated as *part of his family*, and not as mere temporary *boarders*, they are entitled to participate in the privileges of the district school.

3. If they have neither parents nor guardians, they may attend the school of the district in which the families reside with whom they elect to make their homes. In short, they may attend the school of the district where they are temporarily residing, provided they could not legally be enumerated in any other district.

But children coming into a district and *boarding*, for the purpose of attending school therein, are not entitled to that privilege, unless the school directors see fit to grant it,

If a person, however, who is not an inhabitant of some other district, resides temporarily in a given district, all the children of school age belonging to his family may attend the school of the district in which he thus temporarily resides.

QUES. 108.—Has a teacher the legal right to open his school with prayer?

ANS.—On this extremely delicate and important matter I have not been able to find any decision of the Supreme Court of this State. But in the State of New York it has been decided, under a school law similar to that of this State, that "teachers may open and close their schools with prayer and the reading of the scriptures, provided they take care to avoid all controverted points or sectarian dogmas."

In some States it has been held that teachers cannot claim this right as a matter of course, but that school officers may, in the exercise of a sound discretion, permit them to open and close their schools with prayer, provided the inhabitants of the district do not seriously object, and provided also that the harmony of the district would not seriously be disturbed thereby.

If the teacher in his prayers avoids all sectarian dogmas, and does not improperly consume time, I do not see why he may not be permitted to do what he believes to be his conscientious duty for the welfare of those committed to his charge, by appropriately invoking the blessings of God upon his important and responsible labors, as by properly addressing or lecturing his pupils upon the importance of a strict adherence to the principles of truth, justice and morality.

But the teacher should not insist on this privilege, nor should the local directors grant it, in cases where it would create dissatisfaction in the district, or induce a portion of the inhabitants to withdraw their children from school, because of *sincere* conscientious scruples on this subject.

The question as to the right of opening a school with prayer is one of great delicacy, and should be treated accordingly. In a matter of such grave character, involving the interests of religion, the freedom of conscience, and a sense of duty, school officers, teachers, and the inhabitants generally, should exercise great forbearance and a spirit of conciliation. John C. Spencer, one of the most distinguished jurists in the State of New York, while acting as superintendent of common schools in that State, decided a similar question as follows, viz.: "Prayers can not form any part of the school exercises, or be regulated by the school discipline. If had at all, they should be had before the usual hour of commencing school in the morning, and after the hour of closing school in the afternoon. If any parents are desirous of habituating their children to the practice of thanking their Creator for his protection during the night, and invoking his blessings on the labors of the day, they have a right to place them under the charge of the teacher for that purpose. But neither they nor the teacher have any authority to compel the children of other parents, who object to the practice, from dislike of the individual or his creed, or from any other cause, to unite in such prayers.

"And, on the other hand, the latter have no right to obstruct the former in the

discharge of what they deem a sacred duty. Both parties have rights; and it is only by a mutual and reciprocal regard by each of the rights of the other, that peace can be maintained, or a school flourish. The teacher may assemble in his school-room, before nine o'clock, the children of those parents who desire him to conduct religious exercises for them; and the children of those who object to the practice will be allowed to retire or absent themselves from the room. If they persist in remaining there, they must conduct with the decorum and propriety becoming the occasion. If they do not so conduct, they may be dealt with as intruders."

In the same State, it was held by Gen. John A. Dix, an eminent statesman and jurist, that "the teacher of a school may open it with prayer, provided he does not encroach on the hours allotted for instruction, and provided the attendance of the scholars is not exacted as a matter of school discipline."

In a case which came before Henry S. Randall, superintendent, and which set forth that in a certain common school "the religion and faith of Catholic children were interfered with by their being compelled to 'join in prayers,' and 'to read and commit' portions of a version of the Bible which the Catholic church disapproves," he said: "In theory, I have never been able to doubt that intellectual and religious instruction should go hand in hand. To divorce them entirely, and to bestow attention on the former only, is to draw forth and add to the powers of the mind, without giving any moral helm to guide it; in other words, it is to increase the capacity without diminishing the propensity to do evil. To banish religious education from the schools is, in a multitude of instances, to consign it to the care of the vicious, the ignorant, the careless, or those who feel that they have no time to attend to it. The placing of it in its natural connection with intellectual education in the school-room, has met, however, in our country, with serious practical obstacles.

"The government, not relying on the ability or willingness of every part of the state to maintain efficient schools for the education of the young, by voluntary contributions, and recognizing the imperative necessity of universal education for the maintenance of our civil and political institutions, organized a general common school system, and made provisions to aid those sending to school, in sustaining it by the payment of a large sum annually from the treasury. To prevent this money from being misapplied, it prescribed the conditions on which it shall be received and expended; and it created a special state officer, with administrative and judicial powers, to carry out and enforce the system. The common schools were thus clearly made a government institution. To introduce into them, or permit to be introduced into them, a course of religious instruction conformable to the views of any religious denomination, would be tantamount to the adoption of a government religion—a step contrary to the constitution, and equally at variance with the policy of a free government and the wishes of the people. To form for the schools a course of instruction which could bear the name of a religious one, and which would meet the views of all, was manifestly impossible. To give every sect a *pro rata* share of the school moneys to enable it to support its own schools, and teach its own system of religious faith in them, would be to divide into a dozen or more schools the children within the territory convenient for attendance on a single school, and in which the support of all the inhabitants is frequently scarcely adequate, with the aid of the public moneys, to sustain a single efficient school. Indeed, under this arrangement, a single indigent family would often be required to support its own school, to go without any, or to violate its conscience by joining with others in one in which a religious system was taught wholly at variance with its own. There are other reasons which have gone to convince the public mind of the impracticability of carrying out such a plan so as to attain the object sought—the education of *all* the people—which do not require enumeration.

"In view of the above facts, the position was early, distinctly, and almost universally taken by our statesmen, legislators and prominent friends of education—men of the warmest religious zeal, and belonging to every religious sect—that the instruction in our public schools should be limited to that ordinarily included under the head of intellectual culture, and to the inculcation of those general principles of morality in which all sects, and good men belonging to no sect, can equally agree.

"We have seen that even prayer—that morning and evening duty which man owes to his Creator—which even the pagan and savage do not withhold from the gods of their blinded devotion—which, conducted in any proper spirit, is no more sectarian than that homage which constantly goes up from all nature, animate and inanimate, to the bountiful Giver of all things—has been decided by two eminent jurists as inadmissable as a school exercise within the school hours, when seriously and conscientiously objected to by any portion of the inhabitants of a school district.

"This decision has been acquiesced in without a murmur, by the whole religious public. The intelligent religious public have felt that there was no middle tenable ground between religious instruction—strictly so called—in our common schools, and the broadest toleration.

"Compelled by circumstances to adopt the latter position, they have embraced it in its most comprehensive import, and have nerved themselves to the task of supplying a lamentable omission in the public schools, by increased assiduity to the spiritual wants of their offspring in the family circle, in the Sunday school, and in the church. In our crowded cities, where poverty sinks to its lowest ebb, and vice puts on its most unmitigated forms, where multitudes of children would receive no religious instruction from or through the instrumentality of their parents, voluntary church and individual organizations are putting forth their endeavors to supply such instruction. Many, doubtless, are not reached by these efforts; nor would they be reached if religion was taught in the common schools, for the children of the extremely poor and the vicious oftentimes could not or would not attend them."

Believing that the foregoing opinions and decisions may now be regarded as the well settled rule in the premises, and that they are founded on principles of equity, and in accordance with that spirit of entire religious toleration which characterizes our constitution and laws, and which ought to characterize every institution founded by the state, I feel no inclination to gainsay them.

Let it be distinctly understood, however, that if no objections are raised against religious exercises in school, if the exercises are of reasonable length, and if the teacher takes care to avoid the discussion of all controverted points, or sectarian dogmas, he may conduct those exercises during school hours.

QUES. 10.—When the board of education of a township in which the school-house of a joint sub-district is situated, has made an estimate of the expenses of every kind necessary to sustain the school in such sub-district, and the board of the adjoining township refuses or neglects to supply its share of such expenses, what is the remedy?

ANS.—The board of education, having the control and management of the school, may apply to the supreme or district court for a writ of mandamus, to compel the delinquent board to perform the duty which is required by section 16 of the school law.

The language of said section is too obvious to be misunderstood, and the duty enjoined too manifest to be mistaken. "And the board of the adjoining township or townships, so connected for school purposes, shall each make the *proper estimates* of their share of expenses, of *every kind* necessary to sustain said school, and certify the same to the auditor of the proper county, as part of their annual estimates for school purposes," etc.

If, however, the board having the control and management of said school, should prefer not to go to law on the subject, they may regard said neglect or refusal, on the part of the other board, as tantamount to an agreement to have said joint sub-district dissolved, and may proceed to incorporate their part of it with other sub-districts in their township, and thus avoid any further trouble on the subject.

QUES. 110.—When the qualified voters of a sub-district fail to meet and elect a local director, at the time designated for the annual meeting, and the director whose term of office has expired, refuses "to continue in office until his successor is elected and qualified," what is to be done?

ANS.—Any three of the qualified voters of such sub-district, may call a special meeting of the voters of such sub-district, for the purpose of electing a director, as provided in section 4 of the school law; and if such special meeting be not called within a reasonable time, the township clerk may appoint a person to act as local director, until such special meeting be called and a local director be duly elected and qualified.

QUES. 112.—Does the school law of this state confer upon colored youth the privilege of entering, as a matter of legal right, the common schools of the city, village or township in which they reside? In case the law does not allow them this privilege, how shall provision be made for their education when there are only two or three such youth in a school district?

ANS.—Under the general school law of this State, colored youth are not allowed to enter, as a matter of right, the schools provided for white youth. But they are entitled to a *per capita* share of all school funds made applicable to the payment of teachers; and it is the duty of the several boards of education to see that said share of the school funds is properly expended for the education of said colored youth, and for no other purpose.

By section 31 of the school law, the board of education in each township, city and incorporated village in the State, is *required* to establish within its respective jurisdiction one or more schools for colored children, whenever the whole number exceeds thirty by enumeration. Whenever the number does not exceed thirty, then it is the duty of said board to reserve the money apportioned to any township, city or village, on account of said colored youth, and expend the same in such manner as said board may deem most expedient and advantageous for the education of said youth.

In most of the sub-districts in which there are only two or three resident colored youth, the inhabitants have waived all legal objections to the education of said youth in the common schools of the district. And it is hoped that in no sub-district in the State the inhabitants will be found so extremely fastidious or unphilanthropic as to deprive a poor colored youth of all education, rather than allow him to attend the common school.

QUES. 113.—In a certain sub-district, in the township of ——, a new school-house has been erected, but so situated that, by reason of swamps, and the want of passable roads, it can not be reached by a large number of scholars resident in said sub-district. The local directors refuse to establish two schools therein, and hence several of the inhabitants are obliged to maintain a private school, or let their children go without education, and this, too, notwithstanding they pay taxes for the support of schools. What is the remedy for such evident injustice to a portion of the people of this sub-district?

ANS.—By section 63 of the general school act, it is declared that all the real and personal property in the State shall be taxed for the purpose of "affording the advantages of *free education to all the youth of this State*" Hence, every inhabitant may reasonably demand of the board of education, in the township in which he resides, the establishment of a school within such a distance of his residence, and with such facilities for reaching it, as would enable his children to attend it without traveling an unreasonable distance, or over impassable roads, or through swamps

Until such roads are rendered passable, and the swamps drained or bridged, the inhabitants who are incommoded, as already stated, should apply to the township board for permission to send their children to the schools in other sub-districts more accessible; and the board would be in duty and in law bound to grant such permission, if the facts are as stated. And if the board should refuse, without good cause, to grant the privilege solicited, the parties feeling themselves aggrieved could then apply to the district or supreme court for writ of mandamus, to compel the board to do its duty in this regard.

ANSWERS TO QUESTIONS ON THE SCHOOL LAW.

BY ANSON SMYTH, COMMISSIONER.

QUES. 114.—In —— township, the local directors employed a young man to teach their school. After a few weeks it was discovered that his moral influence over his pupils was of a most pernicious character. He had, in a clandestine manner, circulated among them a vile and licentious book, which was calculated to excite the grossest passions, and lead to shameful and ruinous practices. Many of his pupils were withdrawn by their parents from the school, and the directors were requested to dismiss him from their employment A majority of them, however, decided to continue him in charge of the school. Have the township board of education authority, under our school law, to interfere in the matter, and discharge the teacher? If not, what course can be pursued, lawfully, to secure the dismission of the teacher?

ANS.—It is deeply to be regretted that instances like this should arise under the operation of our school system The object of our schools is the improvement of those who attend them. Such improvement will not be secured under the instructions of ignorant or immoral teachers. The greatest possible defect in the qualifications of those to whom the instruction of our children is committed, is the want of high-toned morality. Nowhere else are evil principles and vicious habits more destructive in their operations than in the teacher. A noble, honorable and pure spirit is an indispensable requisite in all whose work it is to mould the characters and shape the destinies of the young. That such a teacher as he in regard to whom complaint is made should be removed from his office without unnecessary delay, all considerate persons must admit. The question is, how shall this removal be effected? It is thought by some that the board of education have authority, when, in their estimation, the interests of schools require it, to interfere in such matters, and overrule the decisions of the local directors. If they have this right, it is wholly inferential; for it is not explicitly conferred by the school law. In section 6 of this law it is declared that "it shall be the duty of the school directors in each sub-district, to take the management and control of its local interests and affairs, to employ teachers, * * and to dismiss any teacher, at any time, for such reasons as they may deem sufficient." The right of appeal from their decision in such cases is nowhere expressly given. In the opinion of the undersigned, the action of the local directors in such cases should be considered decisive and final. Otherwise numerous and unfortunate collisions will arise between the local directors and the board of education.

Section 45 of the general school law provides an appropriate and sufficient remedy for all such cases. Its language is: "If, at any time, the recipient of the certificate shall be found incompetent or negligent, the examiners, or any two of them, may revoke the same, *and require such teacher to be dismissed.*"

If, upon due examination, the examiners find that the teacher has been guilty of immoral practices, it is their imperative duty to revoke his certificate, inasmuch as the law makes a "*good moral character*" a requisite to obtaining such certificate.

QUES. 115.—Can a board of education, under the restriction of the last legislature, levy a tax, general or special, for building purposes, etc., which will amount

in the aggregate to more than two mills on the dollar, without submitting the subject to a vote of the people? The effect of the law seems to make this restriction, whether designed or not. And such restriction is certainly needed, on account of the abuses practiced under the authority of the 23d section. The special assessments are becoming the rule, and the township levy the exception. This practice not only imposes heavy and perplexing duties upon the auditors, but is also the source of constant jealousy and strife among township officers. A sub-district levy for building purposes usually runs from eight to fifteen mills on the dollar; and the above restriction would virtually do away with such levies, as the amount produced would be insufficient to accomplish the objects desired.

Ans.—Numerous inquiries have been addressed to this department, relative to the effect upon the 23d section of the recent amendments of the 22d section of the general school law. Many entertain the opinion expressed in the above inquiry, which comes from the auditor of Meigs county. Others claim that section 23 is in no manner modified by the amendments above named. They contend that inasmuch as this section was neither amended nor repealed, it still gives boards of education authority to levy, without restriction, taxes upon sub-districts, for building purposes.

In order to arrive at just conclusions upon this subject, a correct idea of the original purpose and design of section 23 is necessary. It formed no part of the law as first drafted and presented to the Legislature. The purpose and spirit of the law were, to impose *township* taxes for all school purposes whatever. To this plan some members objected; and, as a compromise of conflicting opinions, section 23 was added. This section was never designed to originate power with the boards of education to assess taxes additional to those named in section 22. It is in its character supplemental to that section, defining how, under given circumstances, the taxes named in said section 22 shall be levied. Whatever amendments, therefore, go to restrict or limit the power of taxation conferred by section 22, pass, by necessity, to the following section.

Among the amendments to the school law, passed April 17, 1857, is a modification of section 22, which limits taxation for all school purposes, other than the payment of teachers, to two mills on the dollar, of the taxable property of the township, excepting in cases where a vote of the township shall decide that a greater tax is necessary. As section 23 is virtually part and parcel of section 22, no greater tax than two mills on the dollar can be levied upon any sub-district for building purposes, except when the people of the township shall, by vote, order otherwise.

If the effect of this opinion shall be a practical repeal of section 23, it will be, in the opinion of the undersigned, no cause for regret, as said section has been a constant source of difficulty between various school authorities, and of injury to the cause of education throughout the State.

Ques. 116.—Is it possible, under the school laws of the State, for township boards so to distribute the school funds as to give the small districts an equal number of months of school with the larger ones? There are several sub-districts in this (Pike) county which pay heavy taxes, but enumerate few youth. They do not receive funds sufficient to sustain schools half as long as do the more populous adjoining districts, which pay much less for the support of schools. Must the board, in all cases, distribute funds according to the enumeration?

Ans.—Section 24 of the school law, as enacted in 1853, was explicit in requiring that the disposition of funds applicable to the payment of teachers should be in proportion to the youth enumerated. Its language was: "All school funds, made applicable to the payment of teachers only, shall be distributed to the several sub-districts, and fractional parts thereof, in the township, in proportion to the enumeration of scholars, with the exception of so much of the township tax as may have been levied and reserved by the board for sustaining teachers in the

central or high schools, and such school funds as arise from the sale or rents of section sixteen, or other lands in lieu thereof, shall be distributed to the localities to which such funds belong."

This rule worked great injustice and inconvenience in many townships in all parts of the state. In some sub-districts, large sums of money were accumulated from surplus funds, over and above what was required to maintain their schools seven months in the year. In others, the amount received was not sufficient to maintain the schools for half that time. This arose from the inequality of the sub-districts in respect to the number of youth which they included.

But this evil was entirely removed by the amendment of this section, passed April 17, 1857. The township tax which shall be levied for the continuation of schools after the state fund has been exhausted, may be distributed according to the necessities of the several sub-districts. That is, "*those sub-districts which contain comparatively a small number of resident youth of school age, and which, owing to sparseness of population, and other unavoidable obstacles, can not be enlarged without serious inconvenience to the inhabitants,*" may receive a greater share of the school fund than they could draw on the ground of enumeration.

Let it be understood that the moneys derived from the state levy of one and one-half mills on the dollar valuation, are still to be distributed to the several sub-districts, in proportion to the enumeration of scholars The distribution of funds raised by the township tax for the continuation of schools after the state fund has been exhausted, are, alone, subject to the discretion of the township board of education.

Ques. 117.—Can a sub-district, which has a surplus of money applicable to the payment of teachers, be made to divide with smaller sub districts in which there is a deficiency ?

Ans.—Inasmuch as section 24 of the general school law, prior to its amendment, March 17, 1857, required that all funds such as are contemplated in the question, "shall be distributed to the several sub-districts, and fractional parts thereof, in the township, in proportion to the enumeration of scholars," and as the operation of this rule has, in numerous instances, induced in townships the condition which the question implies, it is evident that the interests of education demand a refunding of surplus moneys, that the same may be applied to relieve the necessities of such sub-districts as are deficient in funds. But I know of no law which would "compel" the refunding of moneys received according to the explicit provisions of law. There is, however, a remedy, which township boards of education can apply in all such cases of injustice and inconvenience. By the amendment alluded to, boards have authority to distribute the funds raised by townships for prolonging schools after the state fund has been exhausted, *according to the necessities of the several sub districts.* If, therefore, a given sub-district has a surplus on hand, the board may take that fact into account, and at their next distribution make such a division of funds as would equalize the resources of all the sub-districts.

It is true that this remedy is *prospective* in its operation. It does not furnish *immediate* relief to the smaller sub-districts. Still, it assures them of relief at the earliest period consistent with the provisions of law.

Ques. 118.—Does the school law require that the superintendent of the schools in a city or village, be examined, and receive a certificate of qualifications to teach, in order to draw his pay from the public funds ?

Ans —No such office as that named in the question, is known to any existing school law of the state. Section 13 of the general school law gives the township board authority to appoint *one of their own number* the acting manager of schools for the township. But this is not such an office, precisely, as that named in the inquiry.

That the character of this office may be understood, we must consider its ac-

customed duties. What, then, are the appropriate labors of a superintendent of the schools of a village or city?

In our larger towns, the superintendent devotes all his time to the general oversight and management of the schools. He recommends to the board of education suitable persons to be employed as teachers. He frequently visits the several schools, and advises or directs the teachers in regard to their duties. He calls meetings of the teachers, and gives them instruction in regard to teaching and discipline. He examines classes, and promotes pupils from grade to grade, according to their proficiency. He takes oversight of the buildings and other school property. In the smaller towns, he acts not only as a general superintendent of the schools, but also a teacher in some one of the departments; devoting, perhaps, one-half his time to each of these branches of labor. In any case, his duties are just what the board, his employers, may please to make them. No state law creates his office, or defines his duties. In all things he is subject to the will of the power that gives him his position.

It needs no argument to prove that he is, virtually, the *principal* of the schools; that is, the *head teacher*, or the *foreman of the teachers*, and as such teacher, it is manifestly proper that he should receive from the proper source a certificate of qualifications. He receives his salary from the same fund, and in the same manner that other teachers do. And as the law positively forbids the disbursement of this fund to any excepting teachers holding the proper certificate of qualifications, it is plain that the question should receive an affirmative answer.

QUES. 119.—If directors furnish a teacher with a set of written rules, and he gains the disapprobation of some parents by trying to carry them into effect, have the directors power to close the school before the term expires? Or, if a teacher is discharged while he is complying with the reasonable requirements of the directors, can he not recover pay for the full term, according to the article of agreement?

ANS.—Inquiries similar to the above, are frequently received at this office. Section 6 of the general school law, makes it the duty of the school directors "to employ teachers, * * * and to dismiss any teacher at any time, for such reasons as they may deem sufficient."

Section 11 of "an act to amend, and supplementary to an act entitled 'an act to provide for the reorganization, supervision and maintenance of common schools,' passed March 4, 1853," dated April 17, 1857, provides that "If the directors of any sub-district dismiss any teacher for any frivolous or insufficient reason, such teacher may bring suit against such sub-district, and if, on the trial of the cause, a judgment be obtained against the sub-district, the directors thereof shall certify to the clerk of the board the sum so found due, and he shall issue an order to the person entitled thereto, upon the township treasurer, to pay the same out of any money in his hands belonging to said sub-district, and applicable to the payment of teachers. In such suits, process may be served upon the clerk of the sub-district, and service upon him shall be sufficient."

These provisions are so clear and explicit as to render explanation unnecessary. Directors have power to dismiss a teacher for such reasons as *they* may deem sufficient. But should the *court* before which the teacher should bring suit, deem these reasons "frivolous or insufficient," such teacher can recover such an amount as the court shall judge to be just and proper. Whether this amount, in any case, shall be the same as the "pay for the full term according to the article of agreement," will, doubtless, depend upon the facts pertaining to each litigated case.

Competent and worthy teachers are liable to be dismissed by incompetent and unworthy directors. But such cases will be exceedingly rare. The chief danger in regard to this matter is that worthless teachers will be suffered to continue in charge of schools, when both justice and mercy demand that they should be dis-

missed from an employment for which they are utterly unqualified. Because a teacher has obtained a certificate from a board of examiners, it does not of necessity follow that he is competent to take charge of the instruction of children and youth. In practical knowledge, tact and discretion, the directors may find him to be so deficient as to render his dismission their imperative duty. In such a case, the teacher could not, and should not recover damages.

QUES. 120.—Some two years since, the board of examiners for —— county, granted a certificate of qualification for teaching school, to a certain young man of said county He sustained the examinatian with great credit to himself, and gave satisfactory evidence of an excellent moral character. But upon trial he failed in regard to government. He could not preserve due order in the school-room, and before the time for which he had been engaged had expired, he was dismissed by the directors. He subsequently engaged in another school, and although he continued till the close of his engagement, he failed to maintain order, and the school was of little or no utility to those who attended it.

A few weeks since, he applied to be examined for another certificate, which the board refused to grant, on the ground of his repeated failures in governing his pupils. Are the examiners justifiable for this refusal?

ANS.—Most certainly they are. Scholarship and moral character are not the only requisites required of teachers. No qualifications are of higher importance than the ability to maintain due order in the school-room.

Some young teachers may fail for one term in governing a school, but after that experience, achieve satisfactory success as disciplinarians. For a single failure of this kind, they should not be rejected. But when it becomes a settled point that candidates are particularly deficient in the matter of government, they should be rejected by the board.

Examiners need exercise discretion in deciding such cases.

QUES. 121.—Can a woman be a legal examiner of teachers, under the several school laws now in force in Ohio? If so, is it proper and expedient that they should be appointed to this office?

ANS.—The answer to the former of the above inquiries, must depend upon the phraseology of the laws which create the office of examiner. Section 44 of the general school law makes it "the duty of the probate judge, in the several counties of this state, as soon after the election of school officers under the provisions of this act as practicable, to appoint a county board of school examiners, to consist of three competent persons, resident in the county," etc. Under this law, it is manifest that a woman is competent, legally, to hold the office of examiner. She is a "person," and may be "a resident in the county"

Section 9 of the Akron school law makes it the duty of the town council "to appoint three competent persons to serve as school examiners of said town, all of whom shall be citizens of Akron," etc. Section 13 of the "general act for schools in cities and towns" says: "The board of education, within twenty days after their election, shall appoint three competent persons, citizens of said district, to serve as school examiners of the public schools therein," etc.

These last two laws require that the examiners shall be "*citizens.*" It may be that the Legislatures which enacted these laws intended to require only that the examiners should be *residents*, etc. Still, the *language* of the law must govern in the case, unless the courts shall decide otherwise. A woman is not, legally, a "*citizen*," for this term implies, in law, much more than mere residence. It implies the rights of elective franchise, which have not yet been accorded to woman.

In regard to this point, it is proper to remark that I have consulted the highest legal authority in the State, and have conformed my opinion to the advice thence derived.

In regard to the second inquiry, whether it is *expedient* that women should hold the office under consideration, it is my opinion that *circumstances* should receive

due regard in determining the answer. If men who are every way qualified will accept the position, there are strong reasons why they, rather than women, should receive appointment. Under the general school law, the only one under which women are legally competent, the examiners are *county* officers, and it frequently becomes necessary that they travel from ten to twenty miles for the purpose of holding examinations. When a large number of candidates are examined, severe and tiresome labor must be performed. Many women are physically incompetent for such fatiguing service. It sometimes happens that ignorant and coarse men, who, upon examination, are refused certificates, become denunciatory and brutal in their language, threatening vengeance upon the examiners. It would be improper, not to say cruel, to subject women to such indignities.

But whenever men of suitable qualifications will not accept this office, it is far better that women, if qualified, should receive the appointment, than that it should be given to incompetent men.

NOTE.—It did not occur to me, in writing the above opinion, that the question is settled by the Constitution of the State. Art. XV., sec. 4, declares that "*no person shall be elected or appointed to any office in this State unless he possess the qualifications of an elector.*"

QUES. 122.—A short time since, the probate judge of —— county, for reasons satisfactory to himself, saw proper to remove one of the school examiners of this county, and appointed me in his stead. The removed officer refused to yield his seat, alleging that the probate judge has no lawful authority vested in him, giving him the power to remove a school examiner. I would, then, propose the query, whether the probate judge has the authority to remove a school examiner for any reason, or not, and if not, to what authority or court are they amenable for their conduct? And should they fail to discharge faithfully and impartially the responsible duties devolving upon them, or should be guilty of conducting themselves in an unbecoming manner, what course must be pursued?

ANS.—The school law makes it the duty of the judges of probate to appoint school examiners for their respective counties, but it does not confer upon them the power of removal from office. Power to appoint does not carry with it the power to remove. It is my opinion that there is no law for the removal or impeachment of school examiners.

This fact should induce probate judges to exercise great discretion and carefulness in their appointments to this office. By this course they may avoid the necessity for removals.

In the opinion of the undersigned, it is not desirable that probate judges should have power to remove examiners, as they would often be importuned to make removals for insufficient reasons. For example, any one who should become dissatisfied with the doings of the examiners could get up petitions for their removal. Should the examiners be thorough and faithful in their examinations, and refuse certificates to the incompetent, they would, in many instances, be rewarded with malicious persecution. It is better that an unworthy examiner should be retained in the board for his brief official term, than that the door should be opened to the ingress of interminable difficulties.

QUES. 123.—The local directors of one of the sub-districts in —— county, employed a teacher, some time in December last, to teach for them, who had not at the time a certificate. He closed his school in February last, and at our regular monthly meeting in April he applied and obtained a certificate, dated upon the day of examination. The clerk of the township refuses to grant an order on the certificate. Suit is threatened by one party if he grants it, and by the other if he withholds it. They appeal to the board of examiners to relieve them by dating the certificate back, to cover the time in which he taught.

Question.—What is the respective duty of the several officers, from the local directors up to the board of examiners, in this special case? Would we be justi-

fiable in dating his certificate so as to include the time, or would the clerk be justified in granting an order on the certificate obtained some three months after the close of the school?

ANS.—Sec. 45 of the school law plainly and positively forbids the employment of a teacher who is not at the time of his employment in possession of a certificate of qualifications for teaching, obtained from the board of examiners for the county in which he is to teach. Seldom or never should this prohibition be disregarded, for it is not safe to take it for granted that a teacher who is not in possession of a certificate of qualifications will be able to obtain such certificate. Should such a teacher ultimately fail of obtaining a certificate, under no circumstances should the public school funds be appropriated to the payment of services rendered; but the directors would, in their individual character, be liable for such payment.

In some instances which have come to the knowledge of the undersigned, directors have sought to prevent or avoid such liability by an agreement with the teacher that he should assume the responsibility of obtaining a certificate; and that if he fails to obtain it, he shall receive no pay for the services which he may render. Such a proviso may exempt the directors from pecuniary liability, but it does not necessarily protect the people of the sub-district against the danger of a worthless school; and directors would find it difficult to justify such trifling with the high interests which they are set to guard.

It is my opinion that township clerks should never draw orders for the payment of teachers for time not covered by their certificates. This is the only safe rule by which they can be governed in this matter.

Should an instance arise when it should become absolutely and unavoidably necessary that a teacher commence school prior to obtaining a certificate, and then at the *first* subsequent meeting of the board of examiners obtain a certificate, it is my opinion that said board may *antedate* the same so as to cover the time during which he has taught. But no such dating back should be granted him in case he had neglected to use due diligence to possess himself of a certificate at an earlier period.

For obvious reasons, it is far better that the necessary discretion in this matter should be exercised by the board of examiners than by the township clerk.

QUES. 124.—A teacher was employed for the term of three months, and was to receive $20 per month for his services. At the time of his engagement he had obtained no certificate from the board of examiners, and he taught six weeks before applying for examination. He then obtained a certificate for one year. The local directors certified to the township clerk that there was due the teacher $60, for three months' services. But inasmuch as his certificate of qualifications covered but half of this time, the clerk declined to draw an order for more than half the amount; that is, $30. Such an order the teacher refused to receive, and reported the case back to the local directors. The directors then certified to the clerk that the teacher had taught one month and a half, at $40 a month, and that there was due him $60. But the clerk, believing that this was a mere trick for evading the force of a just law, still refused to draw the order for the full amount.

Questions.—Was the action of the directors and teacher in this matter legal and justifiable? And had the township clerk any just right to go back of the certificate of the directors, and refuse to draw an order for the full amount.

ANS.—In respect to the propriety and honesty of the course pursued by the directors and teacher in this case, my opinion coincides entirely with that entertained and expressed upon the subject by the township clerk. But, in addition to this estimation of the case, there are serious legal objections thereto. Section 24 of the school law enjoins the duty of keeping up schools in all the sub-districts for at least six months in each year. If boards of education report but half the time during which schools have been sustained, they represent themselves as violating the law which requires twice the amount of time which is given in their reports.

As to the second inquiry, I must give it as my opinion that the course pursued by the township clerk was justifiable, and worthy of praise. In all ordinary cases, and in the absence of all evidence of illegality in the proceedings of the local directors in such matters, it is no part of the duty of the clerk to go back of the certificate of the directors, and inquire into the propriety of their official acts. In such cases his duties are simply executive, and not judicial. But when he is in possession of the fullest testimony that he is required to aid and abet in the perpetration of a fraud, to assist in obtaining public funds under false pretenses, it clearly becomes his duty to decline such participation.

It is the design of the law that directors, clerks, treasurers and auditors shall act as checks upon each other; otherwise the school funds might pass directly from the pockets of the tax-payers into the hands of the local directors. But all experience has shown the necessity of appropriate checks and guards, to prevent the perversion and squandering of public funds.

QUES. 124.—The board of school examiners for —— county hold their meetings on Saturday of every week. Each session continues upon an average not to exceed three hours. Each member of the board receives for such services the legal fee of one dollar and fifty cents for each day thus employed. In addition to this, the clerk of the board makes a charge of five dollars per quarter for recording proceedings. Have the clerks of boards of examiners a legal right to receive pay for clerical services, additional to that received as members of the boards of examiners?

ANS.—When the meetings held for examination are so largely attended as to require the whole day for the simple work of examination, leaving the clerk no time to make out certificates and record proceedings, rendering it necessary that this work should be performed on another day, it is just and proper that he receive pay for the same, at the rate of one dollar and fifty cents a day. But such cases will seldom or never occur where the meetings of the board are frequent, and when examinations are conducted on the plan of oral questions.

In all cases similar to the one stated above, extra charges by the clerk are illegal; and such accounts should never be allowed by the county auditor.

QUES. 125.—In two of the sub districts of —— township, special taxes were levied in 1857, for the erection of school-houses therein. The cost of these houses considerably exceeds the amount raised for their erection. Can this deficiency be made up by a special levy upon those sub-districts the present year?

ANS.—Certainly not. The amendment to the twenty-third section of the school law, passed April 12, 1858, declares "*that such tax shall not be levied in any sub-district wherein the same has been heretofore levied, nor in any case shall it be assessed more than once in any sub-district*"

QUES. 126.—What is the just and true interpretation of the amended twenty-third section of the school law, where it declares that a special tax "shall not be levied in any sub-district wherein the same has been heretofore levied?" Does the intention of the word "*heretofore,*" reach back to a period prior to the enactment of the present school law, which was passed March 14, 1853?

ANS.—Of course it can refer to no other taxes than those which have been levied under the authority of this twenty-third section. Under the system which prevailed previous to the enactment of the present law, every district in the state had paid taxes of this character. Any sub-district which has not paid a special tax since the present law came into force, is liable to a levy not exceeding two mills on the dollar, (unless a greater assessment shall be approved by a vote of the township,) for the cost of purchasing a school house site, and erecting or repairing a school house thereon.

QUES. 127.—Are residents of sub-districts, composed of fractional parts of different townships, entitled to vote in the election of local directors, unless resident of that portion of such sub-district which lies within the township where the school

house is located? In other words, are residents of such fractional parts of townships, where no school house is located, entitled to any vote in such election? If so, can such directors be elected from either or all the fractional parts of townships, or only from the one in which the school house is located? If from any or all, the clerk being selected from the number, should he chance to be a resident of a fraction where the house is not situated, will he be a representative in the board of the township in which he resides, or in that of the township where the school house is located.

ANS.—The first of the above inquiries I answer, without hesitation, in the affirmative. Sec. 2 of the school law provides that residents within sub-districts who have the qualifications of voters at the state and county elections, shall be entitled to vote in the election of local directors. The fact that a sub-district may be composed of fractional parts of different townships does not, in the opinion of the undersigned, alter the case in the least. Sec. 16, which authorizes the establishment of joint sub-districts, gives no intimation that any portion of the electors resident within such sub-districts are to be disfranchised, so far as having a voice in the selection of local directors is concerned.

The second point of inquiry I answer by expressing the opinion that local directors for joint sub-districts can be chosen from any parts of such sub-districts. The right to vote under the school laws of the state, carries with it the right to hold office under such laws.

The last point of inquiry is not so easily answered. Should the local directors choose their clerk from a part of the sub-district which is not included within the township in which the school house is situated, and said clerk thereby become a member of the board of education for a township of which he is not a resident, it might be objected that it involved a conflict of legal and municipal principles. But in reply to such objection it is sufficient to state that every part of a joint sub-district becomes, for school purposes, a part of that township in which the school house is situated; so far, at least, as the matter under consideration is concerned. It is, therefore, legal and proper that the clerk of a joint sub-district should become a member of the board of education, without regard to the fact of his residence in one or another of the fractional parts of townships which compose the joint sub-district.

QUES. 128.—By the township levy for 1857, for the purpose of prolonging the schools in the several sub-districts after the state funds were exhausted, there was raised the sum of $471.69, which was to be distributed between 360 scholars, which on the 19th of April last was divided as follows, showing the number of scholars, the amount of state funds, the amount of township funds, and the total amount to each sub-district:

No. of sub-district.	No. of schol ars.	Amount of State Funds.	Amount of T'p Funds.	Total am't to each sub-dist.
1	90	$142 80	$65 63	$208 63
2	92	145 98	62 65	208 63
3	61	96 82	111 18	208 63
4	62	98 41	110 22	208 63
5	55	87 25	121 38	208 63

The question which the board wish you to answer is this: Is the above distribution in accordance with the spirit of the law, or should they have provided a six months' school for the smaller sub-districts, and have left the remainder to be appropriated to those larger sub-districts, so as to have extended the schools to a longer period than six months? There seem to be some doubts in the minds of

some of the members of the board as to the propriety of such a distribution of the township funds.

Ans.—It is my opinion that the distribution of school funds by your board of education was in accordance with the spirit of the law, as expressed in the amended twenty-fourth section It certainly was just and proper, provided the sub-districts required teachers of equal qualifications. As a general fact, a school containing thirty pupils needs as good a teacher as one which contains a greater number. Still, in some instances it is necessary to employ a more expensive teacher for the larger school. The work to be done requires more activity, energy, tact and physical endurance; and it is entirely proper and just that such a teacher should receive a higher compensation than one in a school which does not demand these qualifications to so great an extent.

After providing amply for a school of at least six months in each sub-district, it is my opinion that it is entirely proper that any balance of funds applicable to the payment of teachers which may remain on hand may be appropriated at the discretion of the board.

Permit me to express my gratification that your board are disposed to deal so liberally with the less populous sub-districts It is a cause for regret that the same spirit does not prevail in all the townships of the state.

Ques. 129.—Our board of education are at loss to know how they shall raise funds to keep up a school the length of time required by law, when the directors have paid exorbitant prices for teaching, and expended all of the public funds in three or four months.

Can they authorize a special tax on such sub-district, or must the funds be furnished by a tax upon the township?

Ans.—No tax can legally be levied upon a sub-district for the purpose of paying teachers' wages. It is the duty of the board of education annually to estimate the amount of funds necessary for the purpose of prolonging, after the state funds have been exhausted, the terms of the several sub-districts or primary schools in the township, and certify the amount to the auditor of the county. This assessment cannot exceed two mills on the dollar; and it must be levied upon all the taxable property of the township. The money thus raised, together with that derived from the state funds, will prove amply sufficient for sustaining the schools of the township at least six months in the year. See school law, section 22.

If the local directors in any sub-district are disposed to pay "exorbitant prices for teaching," and thus endanger the prospect of their ability to sustain a school for six months, it is my opinion that the general supervisory powers with which the law invests boards of education, are such as to authorize said boards to establish rules limiting the amount which the local directors may agree to pay teachers.

Ques. 130—The twenty-sixth section of the school law makes it the duty of the township board of education "to make settlement with the township treasurer at their regular session in April annually" And section 29 requires treasurers "annually between the first and twentieth of February, to settle with the county auditor, and account to him for *all* moneys received, from whom and on what account, and the amount paid out for school purposes in his township." Some treasurers think that they should not make settlement with the auditor for school money not applicable to the payment of teachers, and only settle for the teachers' fund and the fund other than for the payment of teachers, settle for with the board of education.

The question I wish answered is, what funds should they settle for with the auditor and what with the board of education? If they are required to settle for all moneys with the auditor, then what is left for them to settle with the board of education?

Ans—The township treasurer must "settle with the county auditor and account to him for *all* moneys received, from whom and on what account, and the

amount paid out for school purposes in his township." I know of no language by which the requirement that the treasurer settle with the auditor for "*all* moneys received," could be made more clear and explicit.

In regard to the second point of inquiry, I give it as my opinion that there is no impropriety in requiring the township treasurer to settle with the board of education for the receipt and disbursement of the same moneys in regard to which he is required to settle with the auditor. A new board of education, or an old one reorganized, comes into power at the time when this settlement is required to be made; and there certainly is propriety in the requirement that they should be made acquainted with the amount and condition of funds subject to their order.

QUES. 131.—Does the school law make provision for the payment of services rendered in preparing the various reports which it requires?

ANS.—Section forty-one provides that the county commissioners of each county in this state, shall make the same allowance to the county auditor out of their respective county treasuries, for services performed and expenses incurred under this act, as is allowed for other services of like nature. It is, therefore, obvious that there is no ground for complaint on the part of the auditors.

The township boards of education are, by section 25, authorized to impose the duty of reporting to the auditors upon their clerk, or upon the acting manager of schools for the township. Should they appoint, for this purpose, the acting manager of schools, they may, according to section 13, "allow him a reasonable compensation for his services" Should they appoint the township clerk to prepare and forward the required report he could claim and receive payment for this labor as well as for other clerical services rendered. In reply to the inquires whether township clerks are entitled to remuneration for their services as members of the township boards of education, or for making and transmitting to county auditors abstracts of the enumeration returned to them, or for taking the enumeration in case the directors in any sub-district fail to take and return the same, or for filling vacancies in the boards of local directors, or for drawing in favor of teachers, or for acting as clerk at meetings relative to central or high schools, or for prosecuting township treasurers on their bonds, or for reporting to the state commissioner when required to do so? If so, from whom and from what funds? The following answer was given by the late commissioner, Hon. H. H. Barney:

"The rule on this subject is understood to be that township or county officers neither salaried nor created by the school law, but upon whom it imposes certain new duties, are entitled to the same allowance out of their respective county or township treasuries, for services performed and expenses incurred under the school law, as is allowed them for other services of like nature, rendered in their official capacity."

In most instances the township clerk is also the acting manager of schools. In either case ample provision is made for payment of services rendered in preparing and forwarding reports to the county auditor.

The reports which teachers are required to make demand no other remuneration than that which is received in their stipulated salaries.

The only remaining officers upon whom reports are dependent, are the directors of sub districts. They are required annually to take, or cause to be taken, an enumeration of all the unmarried white and colored youth between the ages of five and twenty-one years, resident within such sub district, and return the same to the township clerk. When it is considered that there are in each subdistrict three directors, and an average of about sixty youth subject to enumeration, the annual duty thus imposed can not be deemed as seriously onerous.

Although no provision is made for paying school officers for the discharge of *ordinary* duties, yet it must be apparent to all that ample remuneration is provided for preparing and forwarding the several reports for which our school law makes demand; with the simple exception of the enumeration in sub-districts.

It is difficult to understand why such general and earnest complaint should have been made against our school system on this account. I am inclined to the opinion that the provisions of the law relating to this matter have not been fully understood.

QUES. 132.—What penalties does the school law impose for neglecting to make the reports which it requires; and have these penalties been exacted in practice under the law?

ANS.—In case the directors in any sub-district shall fail to take and return the enumeration required, the expense of taking the same may be recovered from them in civil action, before any court having jurisdiction in such matters. If school teachers neglect to make the reports required of them, they forfeit the full amount of their salaries. If boards of education and auditors fail to make the proper returns, their townships and counties can not lawfully share any portion of the state school funds; but those officers are held responsible for the amounts which would have been apportioned to their respective townships and counties had the proper reports been rendered. (See sections 8, 18 and 42.) Section 40 declares that "in case the county auditor shall fail, from any cause, to make return of the abstract as aforesaid, it shall be the duty of the county commissioners to deduct for every such failure from the annual salary or allowance made to the auditor for his services, the sum of fifty dollars."

The law is decided and emphatic in forbidding that funds be apportioned to such townships and counties as fail to make the reports required. Section 37 declares "the county auditors shall annually, and immediately after their annual settlement with the county treasurer, apportion the school funds for their respective counties according to the enumeration and returns in their respective offices; *and no township or other district, city, or village, which shall have failed to make and return such enumeration, shall be entitled to receive any portion of the common school funds.*"

Section 67 is equally explicit in regard to this particular. It provides that no order shall be drawn by the county auditor upon the county treasurer, in favor of any board of education, "unless the local treasurer, clerk, recorder or secretary of such board, or other school officer, *shall first deposit with said auditor, annually, an abstract of the enumeration of scholars and other statistics relative to the schools under their charge, as required by this act, of teachers, local directors, and boards of education in townships.*"

It has been deemed prudent hitherto not to enforce the above provisions; but to afford the people in all parts of the state ample time and opportunity for full acquaintance with the general principles and special details of our school system. But in the opinion of the late school commissioner, the time has come when the highest interests of education demand that for the future all townships, cities and villages, which shall fail to make the returns which the law requires, shall be excluded from a participation in the school funds. Such is also my own judgment in the case. To carry this idea of duty into strict execution, would be, on the part of county auditors, an unpleasant necessity; but whenever an individual has accepted office under any given law, it becomes his imperative duty to abide by the provisions of that law; and delicate and painful as the discharge of his official duties sometimes may be, he has no option but to execute them. And in this view of the case, I shall address all county auditors in the state in regard to this matter. Section 52 declares that the state commissioner of common schools "*shall exercise such supervision over the educational funds of the state as may be necessary to secure their safety, and right application and distribution according to law.* He shall have power to require of county auditors and township boards of education, or other local school officers, clerks and treasurers of townships, county treasurers and clerks, recorders and treasurers of cities and villages, copies of all reports by them required to be made; *and all such information in*

relation to the funds and condition of schools, and the management thereof, as he may deem important."

QUES. 133.—From certain facts of recent occurrence, I desire your opinion upon the following points:

1 Do the school laws of the State authorize teachers to expel or suspend pupils from school? 2. What school officers have this authority? 3. Admitting that boards of education have such authority, can a *single* member exercise it? 4. Should a pupil be suspended until his parents have been consulted in the matter? 5. Who is to decide when a pupil deserves suspension?

ANS.—1. Neither our general school law, nor any of the special laws now in force in the State, confers upon teachers authority to expel or suspend pupils from school.

2. Section 15 of the general school law gives power to boards of education to suspend disorderly pupils from the privileges of the school, which suspension will expire with the current session of the school. Said boards may devolve this duty upon the local directors of the sub-districts. In cities and incorporated villages there are no local directors, and most of the special laws under which their schools are organized confer upon boards authority to make and establish such rules and regulations for the government of the schools as they may deem necessary and proper. See Swan's Revised Statutes, page 860, sec. 11; also page 855, sec. 6. If the boards of education authorize *teachers* to suspend disorderly and ungovernable pupils, it is my opinion that the several school laws of the State will sustain them in so doing. What the boards do through their authorized agents, they do themselves.

3. The answer to this inquiry must depend upon the nature of the rules and practices which prevail with the boards. Section 13 of the general school law empowers boards of education to "appoint one of their number the acting manager of schools for the township, who shall do and perform all such duties as the board may prescribe in relation to the management and supervision of the different schools," etc. Frequently boards authorize their president, or the chairman of the committee on school discipline, to act for them in all matters pertaining to the government of the schools.

4. Boards of education and their authorized agents should be careful that no injustice be done to any pupil. Certainly no child should be subjected to the disgrace of a suspension until all milder efforts have been made to reclaim and reform him. The *right* of a child to attend school should not be considered forfeited until there is full evidence of his persistent purpose to be disorderly. Usually it is eminently proper that parents should be notified previous to the suspension, that their influence may unite with that of the teacher to avert the necessity for extreme punishment But when it is notorious that a parent upholds his child in his evil practices, such parent can make no high claim to be consulted, on the ground either of justice or courtesy.

5. Boards of education are the lawful and proper judges of the question whether a pupil has forfeited the right to continue in the school.

QUES. 134.—At the election of local director, held in a certain sub-district two years ago last April, two persons received an equal number of votes. The parties then decided the election *by lot;* and the man who won was sworn in, and served as director till last June, without objection from any quarter. Then certain difficulties arose in the sub-district, and one party objected to the legality of this director's election. The township clerk decided that he was not entitled to the office, and appointed another man in his place.

1. Was the election valid? 2. If not valid, had the township clerk a right to appoint a director?

ANS.—1. The election was not according to the statute, and was, therefore, not valid. A tie vote is simply a failure to elect; and another ballot should have been

taken, either at the time, or at an adjourned meeting. Or a special meeting might have been held, according to the fourth section of the law. The provision for casting lots in case of a tie vote, found in the second section, had regard, not to the *election* of directors, but to the *duration* of their official terms, and was intended to apply exclusively to the first election held under the law. 2. The vacancy was not one which could be filled by appointment by the township clerk. It was a failure to elect, and therefore a special election should have been called, according to the fourth section of the statute.

It may be proper to remark here, though the matter is not involved in the inquiries presented, that the acts of this director, chosen by lot, are valid and binding. Had another director been chosen at a special meeting, and had the one who was chosen by lot still claimed a right to hold and exercise the office, the question between them could be properly settled only by a writ of *quo warranto*.

QUES. 135.—In —— township it has been the custom to divide up the contingent fund among the sub-districts, and leave it in the hands of the clerks, to be paid out by them as it may be needed. Is this practice in accordance with the school law?

ANS.—It is my decided opinion that such funds should be retained in the custody of the township treasurer until drawn out on orders of the board of education for the payment of *specified* expenses. See School Law, section 24.

QUES. 136.—The local directors of a sub-district in Porter township, Scioto county, Ohio, engaged a teacher, by written contract, on the first day of June, 1861, for the term of six months, commencing September 9th, 1861, for $40 per month. The board of education of that township met on the 16th of September, and passed a resolution instructing the clerk to give no orders on the treasury for more than $33⅓ per month. The clerk then gave written notice to the local directors in the sub-district referred to, that any certificate given by them for more than $33⅓ would be considered null and void. Would the action of the board affect that contract, made on the first day of June?

ANS.—It is my opinion that the resolution of the board of education can not be retroactive; consequently the contract remains valid. *Ex post facto* laws and rules are to be held as void. The teacher can collect the full amount specified in the contract.

Inquiries have been made at this office as to the amount of State school funds to be apportioned during the current school year. Boards of education and other parties desire to know whether the amount will be sufficient to meet and fulfill outstanding contracts.

In reply, I have to state that the amount of funds for the present year, derived from the levy of one and four-tenths mills on all the property in the State, will be somewhat less per enumerated youth than for previous years. The amount already apportioned is sixty-six cents to each, and it is probable that the August apportionment will be about the same, possibly it may reach sixty-eight cents. The whole amount for the year will be six or eight cents less than was distributed in 1860. Now, as the grand duplicate upon which the assessment of last year was made exceeded that of any former year, the question very naturally arises, why the State school fund yields a less amount to each enumerated youth than formerly?

Two facts will furnish a satisfactory answer to this question. The General Assembly of 1860 reduced the State levy for school purposes one-tenth of a mill; and the result is that the amount assessed last year was $24,621 60 less than that of the former year. Again, the number of youth enumerated in 1860 exceeded the number of the former year by 26,930. With an increased divisor and a diminished dividend, it is as plain as arithmetic that the quotient, or amount distributed to each enumerated youth, must be diminished.

QUES. 137.—To accommodate the children in a certain sub-district, the trustees

of the township were called upon to open a new township road. On the location of said road, some $80 or $100 damages were assessed by the viewers in favor of the parties through whose land the road was laid. The township board of education directed their clerk to issue an order on the treasurer, to be paid out of the funds raised for building purposes. But when the treasurer went to make his annual settlement with the auditor of the county, the auditor refused to allow the order aforesaid as a charge against the school house fund, on the ground that it was properly chargeable to the township, and should be paid from township funds. Was the decision of the auditor according to law?

Ans.—In my opinion, there is no room for serious doubt that the decision of the auditor is legally and equitably correct. The school law makes no provision for opening or making roads, or for any similar purpose. It provides for the purchase of sites, the erection and repair of school-houses, the payment of teachers, and other purposes directly and necessarily incidental to the maintenance of schools. But the expense of making or repairing roads can not be included among legitimate incidental expenses. The road spoken of should be paid for in he same manner as though it had been opened without any reference to the school in question.

Ques. 138 —The board of education in —— township consists of eight members, exclusive of the township clerk. At a recent meeting there were present four members and the clerk, making five in all. Was that a legal meeting for the transaction of business?

Ans.—Section 20 of the school law says that a *majority* of the members of the board shall constitute a quorum for the transaction of business. The township clerk is not entitled to a vote in the board, and is not a member thereof, except for clerical purposes. As four members do not constitute a majority of eight, a quorum was not present, and no business could be transacted.

Ques. 139 —Our town, previous to the passage of the Akron school law, was divided into four school districts; after the passage of that law, one district, although we were an incorporated village, adopted that law. After the passage of the act of 1849, the other three districts organized under that act; but the one district under the Akron law refused to come in. Can any part of an incorporated village organize itself into a school district under the Akron law?

Ans.—Without hesitation I answer this question in the negative. See Ohio School Laws, chap. iv., pp. 46 and 47.

Ques. 140.—The board of education in —— have appropriated $400 for building a school-house in one of the sub-districts. The people in the neighborhood propose to subscribe enough more to build a large house with an upper room for a high school. Some object, on the ground that the State fund and individual donations can not be applied together for building purposes. Is this objection well taken and valid?

Ans.—I see no valid objection to building a school-house in the manner proposed. Section 68 of the school law gives boards of education authority to receive donations for the benefit of the schools under their charge. The house, when completed, must be controlled by the board of education.

Ques. 141.—An agent for the sale of Mitchell's outline maps visited —— township and called upon a majority of the members of the board of education, and induced them to sign a blank contract for the purchase of ten sets of maps, at $12 per set. The conditions upon which these signatures were obtained was that the agent should secure the names of *all* the members, and that a meeting of the board should be called for confirming the contract. But, without visiting all the members, he filled out the blank, delivered the maps to the towhship clerk, procured from him an order on the treasurer of the township for $120, to be paid, with interest, one year after date. The agent then sent to each member of the board a printed notice to attend a meeting called by him for the purpose of confirming the contract. He then, taking with him the order upon the treasurer, left

the township. The board met at the time named in the call, and, after due consultation, voted not to confirm the contract. The clerk was instructed to inform the agent that his maps were not wanted, and his order would not be paid, inasmuch as it had been obtained by misrepresentation.

1st. Have boards of education authority for purchasing maps or other apparatus, and paying for them from public funds?

2d. When maps are purchased, to be paid for out of the funds to be raised the following year, will the new board of education be under obligation to recognize such purchase, and provide for payment in their estimates to the county auditor?

3d Is a contract, like the one named, binding, unless confirmed by a regular meeting of the board?

4th. Can the agent compel the treasurer to redeem the order mentioned?

5th. In case the order is not paid from school funds, are the members of the board who signed the contract in blank, individually liable for the payment of the amount?

Ans.—Numerous statements and inquiries like the above have reached this department from the northern and central portions of the State; and I am led to believe that very many transactions like the case mentioned have occurred. And I wish, once for all, to give my opinion upon the several points.

1st I have no doubt that section 22 of the general school law authorizes the purchase of apparatus, to be paid for from the school funds. The language, "*and for any other school purpose other than the payment of teachers,*" is abundantly sufficient to include so necessary an auxiliary to instruction as a set of good outline maps.

2d. I have no hesitation in giving an affirmative answer to this inquiry. Boards of education are bodies corporate, and they cannot repudiate the just and legitimate claims which have arisen by the action of their predecessors in office.

3d. Most certainly not. It was not the *board of education* which acted in the matter, but a portion of its individual members, each acting separately. There is nothing in the school law which warrants the transaction of business in this manner. Section 12 provides for holding regular and special meetings, at which all business must be transacted. A question similar to this has been adjudicated in our courts, and it was decided that exact conformity to the law in all such matters is essential to validity. As well might a party draw up a verdict in an important case, and visit the jurymen at their separate residences and obtain their signatures, without the holding of a court, or the trial of the case. As well might a party prepare a bill and visit the members of our Legislature at their homes and persuade them to subscribe it, and then call it a legislative enactment.

4th. He cannot. It is competent for the board of education to countermand the order.

5th. It is my opinion that they are not. The agent well knew that these individuals had no idea of incurring personal responsibility. He assured them that the contract would be void unless approved and confirmed at a legal meeting of the board.

Ques. 142.—The board of education in —— township employed a man to give instruction in singing to all the schools in the township. He visited four schools daily, spending three-fourths of an hour in each school. He held a legal certificate of competency for teaching the ordinary branches, vocal music included. It is now claimed by some that his employment for such a purpose was illegal; and the treasurer has been warned not to pay the amount due him; though there is money in the treasury applicable to the payment of teachers, sufficient to pay all orders that may be drawn against it.

Was the action of the board in the employment of a music teacher *legal*, and if so, what course shall be pursued in the matter?

Ans —1. Section 17 of the school law gives to boards of education authority to determine what studies shall be pursued in the schools under their charge. Most certainly, then, they can prescribe singing, or vocal music, as a branch of study. Having the authority to direct that singing shall be taught in the schools, it is a manifest inference that it becomes their duty to make the necessary provision for imparting this instruction When it is advisable to place this branch of education under the exclusive charge of a teacher, it becomes the duty of the board to employ such teacher; and his salary should be paid from the same fund from which the other teachers in the township are paid When the board of education directs the clerk to draw an order in favor of the teacher, it is my opinion that it is the duty of the treasurer to pay the order,—that he has no option or discretion in the case, unless he is legally enjoined from paying.

2. Custom, in numerous cases throughout the State, favors the view of this subject which I have already given There are very many boards which for years have employed special teachers for giving instruction in singing, penmanship, etc., and their authority for so doing I have never heard questioned. There are few, if any, branches of education more desirable and important than vocal music, and I earnestly wish that every board in the State would follow your example.

You ask the *legal course* for your board to pursue. If payment has been enjoined, of course the treasurer can do nothing till the injunction shall be dissolved. If payment has not been enjoined, and the treasurer refuses to discharge his duty, he can be compelled thereto by a writ of mandamus.

Ques. 143.—In the event a teacher is dismissed during the term of his school for good or even sufficient cause, by the directors, and he recover for the time he has taught, or for the whole time he contracted to teach, are the directors bound to refund to the treasury the amount so received?

Ans.—The above question is answered in the negative. See supplemental section 2, of the general school law, passed April 17, 1857.

Ques. 144—The following questions have recently been addressed to this office:

The school in —— are organized under the law for "schools in cities and towns," passed February 21, 1849. The board established a rule that its president should have no vote, except in case of a tie.

Is this rule in accordance with the statute?

Ans —It is not. Section 4 of the act requires "that said directors, within ten days after their appointment, shall meet and organize by choosing from their number a president," etc. The president is not merely a presiding officer; he is an elected member of the board. By accepting an office in the board, he forfeits no right previously possessed. His case is like that of the Speaker of the House of Representatives in our General Assembly. The House could not, lawfully, make a rule prohibiting him to vote. The board would do well to repeal the rule, though the president is not bound by it in any case.

Section 10 of the school law declares that a majority of the members of the board of education shall constitute a quorum for the transaction of business.

Ques. 145.—Should the township clerk, who is clerk of the board, be counted in constituting a quorum?

Ans.—As the clerk is not entitled to vote, he is not, *strictly speaking*, a member of the board of education, but rather the *clerk* of the board It is, therefore, my opinion that he should not be taken into account in deciding whether a quorum is present. It is true that the first clause of the first sentence of the section makes the township clerk a member of the board; but the second clause so modifies the first as to justify the opinion which I have given. Our township clerks are, doubtless, among the most intelligent and competent members of our board of education, and I think it would be well if the law had entitled them to vote, thus putting them on an equality with the other members. But, as the law is, they are like

the clerks of common councils in our cities. I would not, however, be understood as saying that these clerks may not take part in the discussions which may arise in the board. Whether the law entitles them to this privilege is a matter of some doubt. Still, it is both proper and important that boards should avail themselves of the counsel which their clerks are competent to give. Furthermore, it is my opinion that they are so far members of boards as to render it proper that they be appointed acting managers of schools for the townships.

QUES 146—If neither the township boards nor the local directors establish rules and regulations for the government of schools, have teachers a right to make such rules and regulations?

ANS.—Most certainly. It is not only their right, but also their duty. A school without any plan of government would be not only lawless, but useless.

QUES 147.—The boards of education of G. and C. townships, upon the line of which is situated the village of P., organized a joint sub district comprising said village. Each township made its due appropriation for building a school house. The Board of G township authorized the local directors to select a site and build the house. Now, the centre of the sub-district is in C. township, and a large proportion of the inhabitants of the village are dissatisfied with the site selected. They think that it should have been in C. township, which furnished 1,280 acres of the joint sub-district, while G. furnished but 1,120.

What is the law applicable in this case?

ANS—There is no law directing in which of two fractions the school house shall be located Common sense and equity indicate that both boards of education should unite in designating the site. Certainly either board, regardless of the other, has no right to dictate in the case. Perhaps it would be well for the boards to submit the question of location to the decision of the inhabitants in the joint sub-district. It is my opinion that the number of acres in either fraction does not necessarily affect this question. Other facts, such as population, the most suitable ground, etc., should be taken into consideration.

QUES. 148.—Has the county auditor power to refuse a township treasurer credit in his settlement for orders which he (the auditor) may in his judgment think to be illegally drawn on the school funds? Is a county auditor justifiable in passing orders on any of the school funds when they do not specify what the money was used for? For example, "Pay A. B. ten dollars out of the contingent fund. C. D., Tp. Clerk." Such an order as the above does not say whether the ten dollars was expended for wood, rent, or what.

ANS—The auditor of the county is the legal guardian of the school funds of his county, and it is his duty to refuse to credit township treasurers for orders which, in his judgment, have been illegally drawn on school funds.

He should also refuse to give credit for orders which do not specify for what the money has been used. Such orders, however, may be corrected by the township clerk, and then allowed by the auditor.

QUES. 149.—The board of education in —— have established a rule which forbids the communicating of pupils during school hours, without special permission from the teacher in charge. The penalty for infraction of this rule is as follows: First offense, suspension from the school for one day; second offense, suspension for one day; third offense, suspension for two weeks. The *legality* of the penalty being disputed by an aggrieved party, and doubted by some members of the board of education, the opinion of the school commissioner is solicited upon the subject.

ANS.—It is my opinion that boards of education have legal authority to establish such a rule, and decree the specified penalty. Section 13 of the school law makes it the duty of boards "to prescribe rules and regulations for the government of all the common schools within their jurisdiction." Section 15 gives them authority "to suspend from their schools any pupil found guilty of disorderly conduct, which suspension shall not extend beyond the current session of the school."

I have answered the point upon which my opinion is solicited; but I deem it proper to avail myself of so appropriate an occasion for expressing my views in regard to the necessity, expediency and propriety of the action of the board in the case under consideration. A transaction may be *legal*, but inexpedient and unjust; and such, it seems to me, is the penalty prescribed for the offense stated. I fully believe that "the communicating of pupils during school hours without special permission from the teacher in charge," should be forbidden, and, by appropriate means, prevented. But I do not believe that in all ordinary cases it is either necessary or wise to suspend a pupil from school, as a penalty for this offense. I admit that it is a very *easy* way for the teacher to administer discipline; and if the object of our schools is to promote the ease and indolence of their teachers, I know of no better way for accomplishing this purpose. The same rule might be made applicable to families, and the child which should three times disobey the law of the household be suspended from home for two weeks. I do not believe that such a practice, either in the family or the school, would prove reformatory of character.

Among the numerous objections which might be urged against the practice of repeated and extended suspensions from school, I will name the following: *First.* It is productive of injury to the pupils suspended, and to their classmates. During their absence of two weeks, they will not be likely to study the lessons of their classes. They will be without instructors, and when they return to their schools they will find themselves far behind in their studies; and thus they will prove dead weights and hindrances to their classmates. *Second* In many cases, this penalty will be an inducement for committing the offense against which it is designed to guard. There are in most of our schools boys who have an admiration for vacations. They are not all of them vicious and incorrigible; but are much more fond of play than of study. They would not commit what they esteem a *crime* for the sake of a vacation, but when sixteen holidays are the promised reward of what they esteem three venial offenses, the temptation is so strong that they become its victims. And when penalty becomes an inducement to wrong-doing, the law *promotes* the evil which it was designed to *prevent*. *Third* This rule and its penalty may become an offense and a grief to parents. They wish their children to be instructed in school, and are willing that they should receive all needed and appropriate correction and punishment. But when they are required by law to contribute to the support of schools, and when they contrive to spare their children from home in order that they may receive instruction, it is not strange that they should object to rules which are liable to keep their young sons and daughters away from school much of the time.

In conclusion, I have a word for teachers upon the subject under discussion. There is for them a more excellent way for the correction and needful discipline of the children who are committed to their care, than banishment from school. Wise teachers, thoughtful, conscientious and earnest teachers, can and will invent measures for the maintenance of good order in school, without resorting to a style of punishment which is in imminent danger of subjecting them to the charge of indolence or cowardice. Let them bravely, yet with kindness, meet the difficulties incident to school government, let them care most of all for the present and future welfare of their offending pupils, and let them exercise a great deal of practical common sense, and they will seldom experience either the disposition or the necessity of executing a penalty so objectionable as the one which I have considered.

I would not be understood as denying that there may be extreme cases in which the infliction of this penalty may be the best thing that can be done.

QUES. 150.—In the latter clause of section 32, it is provided that village boards of education and township boards of education may agree to transfer territory not included in the village to or from the village, etc.

In section 35, i. is provided that "all taxes for building, purchasing, repairing

etc., shall be equally assessed on all the property subject to taxation in such city or *incorporated village*," etc. Now suppose the two boards, village and township, annex territory under section 32, and the village board build a school-house in the village, can the village board assess tax on the territory annexed, to pay for its construction?

ANS.—It is my opinion that the village board can assess tax on the territory annexed, to pay for building a school-house in the village. You will see in section 32 that the territory annexed becomes a part of the school district, as much so as the village itself. *So far as school matters are concerned*, it is a part of the "city or incorporated village," and must therefore be subject to taxation for all school purposes. In any other view of the case, the annexed territory would enjoy an exemption from taxation unknown to any other property in the State, since the township within which it is situated has no control over it in respect to schools.

It is my opinion that the failure to insert the words "territory annexed" in the last sentence of section 35 was either an oversight in drafting the law, or that it was thought to be unnecessary, for the reason that said territory had already been, in effect, declared to be, for school purposes, a part of the city or village.

QUES. 151.—Can a joint sub-district be formed of territory situated in different counties?

ANS.—Most certainly. Section 16 of the school law provides that, whenever it may be desirable to establish a school composed of parts of two or more townships, the respective boards of education of the townships interested shall proceed to organize the requisite joint sub-district. Inasmuch as the law does not forbid the formation of such sub-districts from fractions of different adjoining counties, and inasmuch as there is often a necessity for such joint sub-districts, obviously it was the intention of the law that county lines should be no hindrance to such transactions

QUES 152.—In —— township, the board of education passed a resolution that male teachers should be paid but twenty dollars a month, and female teachers ten dollars a month. Competent teachers can not be procured at these rates, and the directors of some of the sub-districts refuse to be bound by the resolution of the board. They contend that the board has no right to dictate in the matter, and are employing teachers at rates in advance of those named in the resolution. Does the law confer upon boards the right to limit the amount of wages which local directors may pay teachers?

ANS —Section 6 of the statute makes it the duty of the local directors "to employ teachers, and to certify the amount due them for services." This certainly implies that the directors have the power to determine the amount which shall be paid to the teachers of the schools under their care.

But section 13 gives boards authority to "prescribe rules and regulations for the government of all the common schools under their jurisdiction." They are to exercise general supervisory care and direction of all the schools. *If there shall arise*, in any case, *a necessity for the exercise of a controlling power over local directors in regard to the expenditure of funds, they have*, in my opinion, a legal right so to do.

The practice should be this:—Boards of education should provide funds for keeping up schools for at least six months during each year. Local directors should employ competent teachers, and pay such wages as may be necessary to secure such teachers. If they exercise due economy and discretion, they should not be interfered with by the board. But if any of them make an extravagant and wasteful use of the funds apportioned to their sub-districts, thus rendering it impossible to sustain their schools for six months, it then becomes the duty of the board to prescribe the requisite restrictions But they should never put the pay for teachers so low as to make it impossible to insure good schools. The rates named in the case presented are niggardly *as a general rule*, though they may be fair in exceptional cases. It is not always right to pay uniform rates to the sev-

eral teachers in a township. I admit that, as a general truth, a school containing thirty pupils needs as good a teacher as one containing a greater number. Still, in some instances it becomes necessary to employ a more expensive teacher for the larger schools. The work to be done requires more tact, energy, activity and physical endurance; and it is proper and just that such a teacher should receive a higher compensation than one in a school which does not demand these qualifications to so great an extent.

As numerous inquiries are addressed to this office, which the following decision answers, I republish it in order to save the writing of numerous letters.

Martha Hale vs. *Sub-School-District No.* 12 *of Euclid Township.* Cuyahoga Common Pleas, February term, 1860.

Opinion by Judge Bishop.—The petition states that on the 14th day of February, 1859, Adams and Russell, being two directors of defendant, for and in its behalf made a contract with plaintiff to teach for defendant a school for four months, commencing on the first Monday of May, 1859, at $4 50 per week; that on the first Monday of May, 1859, the plaintiff was ready and offered to teach as she had agreed to do, but the then directors of defendant refused to let her teach, and discharged her as such teacher, and she asks judgment for $72 for her wages for said four months, she having lost her time during that period.

To this petition three defenses are interposed:

1. The contract was made with two of the directors of the defendant, not at any regular meeting of the directors, but without the knowledge of the other director, named Miner, who was clerk of the district, and no notice whatever was given to said Miner of the meeting of the directors at which it was resolved to employ said plaintiff, nor did he have any knowledge of the contract, nor was any record made thereof.

2. That the term of office of said Adams as director was to expire by the 12th of April, 1859, and did so expire, and one McIlrath was elected in his place, and the old board had no right to employ a teacher to commence teaching at a time which was only to begin in May following, and could not bind the new board by their acts, thus in advance, as there was no emergency making it necessary for them to act thus.

3. The third defense it is not material to consider.

The plaintiff demurs from these defenses.

The first question is, can two directors of the district, acting separately from the other, and without notice to him, bind the district by their acts.

The school law is very explicit. (Swan's Statutes, 836) Sec. 2 provides for election of directors; sec. 3 for an oath of office, and in case of vacancy in the board, by death or otherwise, the township clerk shall fill it; sec. 4 provides that in case of a failure to hold an annual meeting to elect, a special meeting may be called by three voters of the district; sec. 5 provides that a meeting of the directors shall be called soon as practicable after the election and qualification of the directors, any two of whom shall be a quorum; that one of their number shall be elected clerk, who shall preside at all official meetings, and record their proceedings in a book; that the directors shall meet as often as they may think necessary for the transaction of business, and fill any vacancy in the office of clerk that may occur, and in his absence one of the other directors may act as clerk temporarily in his place; sec. 6 provides that the school directors shall take the management of the local interests of the district, employ teachers, certify the amount due them to the township clerk, etc.

Now, would it seem that the Legislature, in being thus particular, meant something. What was it?

It has provided for the election of a full board, that that board shall be kept full, that a clerk shall be appointed, that a record shall be kept, etc. In all this legislation the law intended all business should be done at formal meetings, and the proceedings recorded; and although two may transact business, *it must be at a meeting*, and the only formality dispensed with is the attendance of one of the directors. Every other requisition of the law is to be observed.

But in order to enable two directors to act in the absence of the other, they must have notified the other director of the meeting, either by personal notice of the time and place of the meeting, or by leaving a written notice thereof at his residence. In transaction of business by all similar bodies such is the law, and there is no reason why the transaction of business by school directors should form an exception.

Try this case by that rule, and what is the result? You have a contract made at a wayside meeting. No notice to the other director, Miner, who was clerk; no record made of the engagement with plaintiff, and the whole kept secret until a new and full board made a legal engagement with another teacher.

I do not think the law or public policy would tolerate such a transaction. I think the teacher is bound to know whether the trustees are acting according to legal requirements or not.

If she is ignorant in fact, when two directors employ her, of their want of power, it does not follow that she is remediless. She may have recourse against the directors individually, who have employed her.

CIRCULAR TO TEACHERS OF COMMON SCHOOLS.

OFFICE OF STATE SCHOOL COMMISSIONER,
COLUMBUS, June 1, 1861.

Section 18 of the general school law of the State is as follows:

"It shall be the duty of the school-teacher to make out and file with the township clerk, at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the township board or local directors; and until such report shall have been certified and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services."

From the beginning of the operation of our school system, great difficulty has been experienced in endeavors to gain full and reliable returns from the counties. The auditors, with justice, complain that boards of education do not furnish them with the facts with which to make up their reports to this office. The boards complain that they are without the requisite data for making such reports as the law requires. Where does this mischief originate? Let us seek the cause, and lay the ax to the root of this tree, so fruitful of evil. It is a matter of great importance, and I call to it the careful consideration of the teachers of the State.

All the reports which the law requires must begin with the teachers of our schools. If they obey the demands of the section already quoted, there will be little difficulty in securing all other requisite statistics. Their duties lie at the foundation of the whole plan of facts and figures; and if the foundation is not sure, the entire superstructure will be uncertain.

It is the duty of teachers to understand what is required of them, before they begin their schools. From the first day of their terms, they should carefully register those facts from which their reports to the township clerks are to be pre-

pared. It may be that some of them will find no registers provided for making entries. Each school-room should be supplied with an appropriate book for this purpose; such, for example, as that published by Samson & Beer, of Zanesville, and a copy of which can be seen at the offices of all the county auditors in the State. But if no better means can be provided, each teacher can easily put together a few sheets of paper, and rule the same after the forms furnished in the "Ohio School Laws," pp. 101, 2 and 3; twenty thousand copies of which have been distributed through the State.

I ask all teachers to look upon this business as a duty bound upon them by lawful authority. The moral sense of all teachers should teach them that it is wrong and dishonorable to ask pay for their services till they have complied with the requirements of the law.

Again, I ask those teachers who hitherto have been delinquent in this matter, to reflect on the mischief thus occasioned. The purpose of the system of reports is defeated, and great interests are sacrificed to indifference and neglect.

May it not be hoped that they to whom this circular is addressed will resolve that in future there shall be no cause for complaint in regard to this subject?

CIRCULAR TO SCHOOL OFFICERS.

OFFICE OF STATE SCHOOL COMMISSIONER,
COLUMBUS, OHIO, Sept. 1, 1861.

To-day a new school year begins. It seems to me proper that I should at this time communicate freely to local school authorities my views and wishes in regard to the administration of our school system during the coming school year.

So general and intense is the popular excitement in regard to the condition of the country, that I have feared that the humble and ordinary duties pertaining to the management of school interests might be neglected by boards of education and other school officers. This need not be the case, and it is exceedingly desirable that all salutary and conservative educational influences should have vigorous operation. The natural tendency of war in a country is to demoralize character. However necessary and just the war may be, there will incidentally grow out of it many corrupting and depraving influences. To check these evils, and maintain social and moral elevation of character, our schools, as well as our churches, need to put forth their best endeavors. Let this great war terminate as it may and when it may, there is reason to fear that the scars which it will leave upon the social and moral character of the people will be deformities which to wear away will require many long years. But I am satisfied that, if parents, teachers, school officers and religious societies will faithfully meet the demands which this crisis lays upon them, very much may be accomplished to protect our children and youth from the dangers to which they are exposed.

To boards of education, I beg leave to suggest that all due efforts should be made to render the schools of the State efficient and salutary. Except in a very few cases, there will be no diminution of funds during the coming year. The amount which you will receive as interest on funds invested with the State, and the amount to be derived from the State levy, will be, at least, quite equal to the sum obtained from these sources during any former year. Unless your local levies have been very greatly reduced, there can be no pecuniary necessity for a failure to render your schools what necessity demands they should be. And if there must be retrenchment at any point, it would be better to defer for a time the building of new school-houses, rather than greatly to abbreviate your school terms, or to employ teachers who can be had at greatly reduced salaries.

I certainly do not wish to dictate to you, but most respectfully to suggest that

you have it in your power to render your schools far more efficient and valuable than some of them have been in former years.

To the teachers of our schools, I have a few thoughts to suggest. During the past summer a considerable number of our teachers have enlisted in the army, moved thereto by an earnest desire to serve their country. I honor the spirit which they have evinced, and I have no doubt that they will do honor both to their present and to their past professions; but whether their present employment is more important and conducive to the highest interests of the country, I have my doubts, since first rate soldiers for our armies are much more easily obtained than first-rate teachers for our schools.

The office of teacher, always important, at the present time is far more necessary, and may be far more useful, than at periods when the range of the instruction of children in schools is more limited than at present. Permit me to call your special attention to an article in the June number of the *Educational Monthly*, upon "THE WAR EXCITEMENT—WHAT USE SHALL WE MAKE OF IT?" prepared by that experienced and honored teacher, Dr. A. D. Lord; and also to his address before the State Teachers' Association, found in the current number of the *Monthly*. I deem his suggestions to teachers of the utmost importance; and I trust that you will faithfully execute the duties indicated. Never had teachers a fairer and fuller opportunity for serving their country and their God than at the present time. May you appreciate your high office, and be found equal to its demands.

I am happy to know that in most of the localities from which I have information on the subject, there will be little or no diminution in teachers' salaries during the coming year. But this rule will have its exceptions, and, upon reflection, it has seemed to me that there may be many cases in which teachers should be willing that their salaries be reduced. Where their salaries heretofore have been liberal, and where business suffers in consequence of the war, it is not unreasonable to ask teachers to share with others a common misfortune. Most of the merchants and mechanics in the State will be obliged to live upon half the income of former years. Many laboring men will be thrown out of remunerative employment. This state of things will be found to operate most seriously in villages and cities, where teachers formerly have received the highest compensation for their services. In such cases it will be no hard and unjust treatment if salaries are reduced.

County auditors, boards of education, county school examiners and principals of teachers' institutes are hereby reminded of the importance of promptness in the preparation and transmission of their annual reports, the blanks for which were forwarded from this office early in August.

I trust that all auditors will see to it that the blanks for boards of education be forwarded without delay. Several townships last year came near losing their school funds by failure to make the reports which the law requires; and in regard to several of them, I at last learned that blanks were not sent them by the auditor of their county.

Boards of education will find the blanks for their use so exceedingly simple that they can have no difficulty in filling them out. They should remember that their reports are due at the offices of the auditors of their respective counties as early as the first day of October. Eighteen townships would last year have failed to share in the school funds of the State, on account of neglect to make reports, had not the General Assembly passed a special act for their relief.

N. B.—Auditors are particularly requested to see that their reports are carefully footed before sending them to this office.

CIRCULAR TO LOCAL DIRECTORS.

OFFICE OF STATE SCHOOL COMMISSIONER,
COLUMBUS, October 1, 1861.

In this circular, I wish to address the boards of local directors throughout the State.

The office of local director is esteemed by many as very humble, and there are not a few of our citizens who look upon it as unworthy of their acceptance. The territory over which each board exercises authority is exceedingly limited, frequently embracing not more than the tenth part of a township. Such boards have no corporate powers, and, practically, they are little more than temporary legal committees in sub-districts. The law provides no payment for their services, and in many cases the remuneration of thanks, even, is withholden from them.

But humble and profitless to the holder as this office may be, it is, nevertheless, one of unspeakable importance; one in which the present and prospective interests of the State are most seriously involved, and one which demands a good degree of business capacity and the most conscientious fidelity. The forty thousand local directors in Ohio have the employment of all the teachers, and the direct care and supervision of all the schools of the State that are organized under our general school law. If faithful to the trust committed to their charge, our schools will rarely fail to work out results most beneficial to individuals, and to every public interest. The two million dollars expended in the payment of teachers' salaries will prove a wise and profitable investment. But if our local directors do not appreciate their office and wisely perform their duties, in vain will it be that the people pay this vast amount for the support of schools, and vain will be all the expectations which have been centered in our school system.

These considerations lead me to offer words of respectful counsel to those whom I now address:

1. *You should employ no teachers who have not, at the time of their emplayment, legal certificates of the required qualifications.* The disregard of the requirement of the statute in this particular, has been the cause of numerous difficulties and of great damage to school interests. Section 45 of the law is definite and decided on the subject, and I know of no sufficient reasons for violating this necessary and just rule. The first question which you should put to applicants for positions in your schools is, *Have you a legal certificate of qualifications?* If in any case a negative answer shall be given to this inquiry, the applicant should be summarily rejected; for if he is so ignorant as not to know that it is improper for him to apply for employment before he can furnish you the required evidence of his worthiness of your confidence, he is not fit for the position which he seeks. It is high time that this kind of ignorance should be no longer winked at. But if the applicant *knows* that you are forbidden to employ one who has not at the time a legal certificate, he virtually solicits you to commit the crime of perjury, since he is aware that you have taken a solemn oath not to do that which he would tempt you to do. In many instances teachers have been employed, and have taught for weeks, previous to their examination; and when the day of trial came, have failed to receive certificates; or have, by indulgent examiners, been suffered to pass, simply because trouble would thus be avoided, and not because they were qualified to teach. It should be remembered by all parties concerned that township clerks have no legal right to draw orders, in payment of teachers, for time not covered by certificates of qualifications, granted by lawful examiners.

2. When teachers are employed, *written contracts should be entered into between the contracting parties.* A convenient form of agreement may be found on page 64 of the present edition of school laws. By this course misunderstanding and litigations will be avoided. Hundreds of letters have come to this office, asking advice in cases of difficulty which have arisen from diverse interpretations of

unwritten agreements between directors and teachers. If teachers are hired by the month, the number of days to be included in one month should be specified.

3. It should never be forgotten that teachers should be employed *only by the action of all the local directors.* That is, all the members should be notified of meetings to be held for the purpose of employing teachers, and the action had should be duly recorded. If two of the directors happen to meet, they have no right to transact official business. A mere way-side meeting is not what the law contemplates, or allows. See the opinion of Judge Bishop, in the Cuyahoga Common Pleas, February term, 1860, published in the June number of the Ohio Educational *Monthly* for that year.

4. Within a few weeks, teachers will be employed for nearly all the sub-district schools in the state. I suggest that, in all practicable cases, *the same teacher be employed for both the winter and the summer school.* I am aware that there are sub-districts in which this course can not be pursued. But the advantages of a permanent teacher are so many and great that I am exceedingly desirous that the popular practice of frequent changes should cease, in all possible cases. These advantages are so apparent to all who reflect upon the subject as to need no definite statement. It is a practice in some portions of the state to employ men, exclusively, to teach the winter schools, and women the summer schools. There may be instances in which this course is proper and necessary; but, as a *general rule,* it is neither proper nor necessary.

5. Please remember that *the best qualified teachers are, in the end, the cheapest, and that incompetent teachers always cost more than they are worth.* The few additional dollars per month, requisite to secure the services of a thoroughly qualified instructor of your children, are most profitably invested.

CIRCULAR TO TOWNSHIP CLERKS.

OFFICE OF STATE SCHOOL COMMISSIONER,
COLUMBUS, OHIO, April 1, 1862.

During the present month, all our Township Boards of Education will be reorganized. To a greater or less extent they will be composed of new members, who will need carefully to inform themselves in regard to their official duties. This is particularly true of the township clerks, as the school law renders theirs far the most important of all our township offices. An experience of five years in the superintendence of the schools of the State, has led me to believe that many of the township clerks enter the office with very limited ideas of the duties they will be called to discharge. It is also evident that not a few of them have been deficient in business qualifications; consequently our school interests have suffered damage. There are many townships which would, through the negligence of their clerks, have lost or forfeited their school funds, during the past year, but for my oversight and intervention. And for these reasons I deem it proper to address these officers at this time, when many of them are just assuming their untried duties.

Section 10 of the school law says:

"That the township board of education shall consist of the township clerk, and of the local director from each sub-district of the township, who has been appointed clerk in his sub-district, a majority of whom shall constitute a quorum for the transaction of business; and the clerk of the township shall be clerk of the board, but shall not be entitled to a vote. It shall be the duty of said clerk to be present at the meetings of the board, and to record in a book, to be provided for the purpose, all their official proceedings, which shall be a public record, open to the inspection of any person interested therein; and all such proceedings, when so recorded, shall be signed by the chairman and clerk."

Let me suggest that these records should be kept in a neat and business-like manner; and that the book used for this purpose should be appropriate in size and style.

But the most important duy which the clerks of boards of education have to perf rm, relates to the preparation of the *annual reports*, which are to be rendered to the auditors of their respective counties.

Section 9 of the law says that—

"It shall be the duty of the directors in each sub-district to take, or cause to be taken, annually, between the first and third Monday of September, an enumeration of all the unmarried white and colored youth, noting them separately, between the ages of five and twenty-one years, resident within such sub-district, and not temporarily there, designating between male and female, and return a certified copy thereof to the township clerk; and in case the directors in any sub-district shall fail to take and return the enumeration aforesaid, it shall be the duty of the township clerk to employ a competent person to take the same, and allow him a reasonable compensation for his services; and shall proceed to recover the amount so paid for such services in a civil action before any court having jurisdiction, in the name of the state of Ohio, against said directors in their individual capacity; and in such suits said clerk shall be a competent witness; and the money so collected shall be applied to the use of common schools in the proper township. The township clerk shall make an abstract of the enumeration so returned to him designating the number of youth in each sub-district, and transmit such abstract duly certified, to the county auditor, on or before the first day of October"

Section 19 says that—

"The board of education in each township shall prepare, or cause to be prepared, and forwarded to the county auditor, on or before the first day of October, a statement exhibiting the number of children in the township, between the ages of five and twenty-one years, distinguishing between male and female; the number of schools, specifying the different grades; the number of teachers, male and female; the number of children, male and female, who have attended school during the past year; the average attendance; the length of the terms of schools; compensation of teachers, male and female;" etc.

For the preparation of this report, the boards will depend upon the clerks. Many of our county auditors have complained that the reports which they receive from townships are so defective and poorly prepared as to be nearly worthless. Now, there can be no sufficient excuse for this delinquency. The blanks which are to be filled are as simple as possible; and any one who can write, and perform the simplest examples in arithmetic, will find no trouble in making the report which the law requires, *provided he is in possession of the requisite data.* This every clerk has in his hands, unless he has disregarded the requirements of the statute.

Section 18 says that—

"It shall be the duty of the school-teacher to make out and file with the township clerk, at the expiration of each term of the school, a full and complete report of the whole number of scholars admitted to the school during such term, distinguishing between male and female, the average attendance, the books used, the branches taught, the number of pupils engaged in the study of each of said branches, and such other statistics as he may be required to make by the township board or local directors; and until such report shall have been certified and filed by the said teacher as aforesaid, it shall not be lawful for said board or local directors to pay said teacher for his or her services."

Let the clerk refuse to draw an order for the payment of teachers till their report has been furnished, and he will at all times have at hand materials for the report which section 19 requires. Should local directors, through ignorance or carelessness, certify teachers' bills, still the clerk should refuse to draw an order on the treasurer till the proper report has been filed with him.

The liability of clerks is set forth in section 25 of the statute, which is as follows:

"The clerk of the board of education, or any one or more of the board designated for that purpose, or the acting manager of schools of the township may do and perform all such duties and services connected with the interests of schools as the board may direct, and report the same to the board for their action and approval; and it shall be the duty of the clerk of the board to keep a full record thereof, in connection with the records of the other official proceedings of the board; and in case of failure to keep such record, or other records required by this act, the clerk of the board shall be liable in a civil action for all loss or damages that may ensue to any person or persons, or to the school district, in the name of such person or persons, or board of school directors, as the case may be, and shall, moreover, be liable, on complaint filed in the name of the State of Ohio, before any justice of the peace, or other court having jurisdiction, to a fine not exceeding one hundred dollars, which, when collected, shall be paid over to the treasurer of the proper township, for the benefit of schools."

I also refer clerks to section 23, in which they will find further instruction in regard to their duties.

Should the reports to which attention has been called, not be rendered as required, there will ensue to the townships a forfeiture of all school funds.

Section 67, in its conclusion, says:

"Nor shall it be lawful for any county treasurer to pay over any portion of the school fund to any local treasurer, board of education, or other school officers, of any city, township, or village, organized as to schools either under a general or a special law, except on the order of the auditor of the proper county; and no such order shall be drawn by the county auditor, unless the local treasurer, clerk, recorder, or secretary of such board, or other school officer, shall first deposit with said auditor, annually, an abstract of the enumeration of scholars and other statistics relative to the schools under their charge, as required by this act, of teachers, local directors, and boards of education in townships."

Let me say to the gentlemen whom I address, that I am exceedingly anxious that the reports for the current year should be complete and reliable. Every clerk should be sure to have his report in the hands of the county auditor as early as the first day of October. The necessary blanks will be sent to all the auditors in August; and if any clerk shall fail to receive a copy in due time, let him call or send for one.

The foregoing instructions are applicable to the clerks or recorders of cities and incorporated villages. See section 34.

SPECIAL NOTICE TO AUDITORS OF COUNTIES.

By my circular to clerks of townships, you have learned that I am particularly anxious that all school reports should this year be rendered with promptness. For this I have the best of reasons, which need not be specified. Permit me to request that you urge upon boards of education in your respective counties the importance of strict obedience to the requirements of the law in this regard. There can be no good reason for the failure of a single district to render its report at the specified time.

N. B.—Please make up your reports to this department as early as the time fixed by the statute—the fifth day of November. A later day will be too late, since it will be impossible for me to delay the completion of my report, however many counties may be delinquent. *Any report which shall not reach this office as early as the eighth day of November, will be too late for use.*

ANSON SMYTH,
State School Commissioner.

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